



Guatemala

Country Reports on Human Rights Practices - [2001](#)

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Guatemala is a democratic republic with separation of powers and a centralized national administration. The 1985 Constitution provides for election by universal suffrage of a one-term president and a unicameral congress. President Alfonso Portillo of the Guatemalan Republican Front (FRG) took office in January 2000 following a generally free and fair December 1999 runoff election. The FRG maintains its majority (63 seats) in the 113-member Congress. Despite significant pledges, the Portillo administration and Congress took only limited steps to implement the 1996 Peace Accords concluded with the Guatemalan National Revolutionary Unity (URNG) guerrillas in 1996. The judiciary is independent; however, it suffers from inefficiency, corruption, and intimidation.

The Minister of Interior oversees the National Civilian Police (PNC), created in 1997 under the terms of the Peace Accords. The PNC has sole responsibility for internal security. There are no active members of the military in the police command structure, but the Government frequently ordered the army to support the police, who are ill equipped and lack resources. Under existing law, military personnel were subordinated to police control during joint patrols or operations. The Constitution requires the Minister of Defense to be either a colonel or a general in the military. The Government abandoned efforts to appoint a civilian as Minister of Defense after the Constitutional Court ruled in 2000 that it would be unconstitutional for the President, as Commander in Chief, to name a civilian as the Minister of Defense, with the rank of assimilated general. In December in violation of the spirit of the Peace Accords, the President named the former Minister of Defense, General Eduardo Arevalo Lacs, who had retired only the previous day, to be the new Minister of Interior. The President has not yet carried out his commitment to dissolve the Presidential Military Staff (EMP), and the Government increased its budget in the year. In addition, the Finance Ministry increased the overall military budget. Some members of the security forces committed human rights abuses.

The country has a population of slightly over 11.5 million. The mostly agrarian, private sector-dominated economy grew by approximately 2.5 percent during the year. Coffee, sugar, and bananas are the leading exports, but tourism and apparel assembly are key nontraditional industries. Significant declines in world prices for coffee adversely affected the economy. About 40 percent of the work force is engaged in some form of agriculture. According to the U.N. Development Program (UNDP), between 50 and 60 percent of the population depended on subsistence farming. Inflation rose to 8.9 percent during the year, driven by high fiscal deficits and tax increases. According to a study by the Ministry of Agriculture, 4 percent of producers controlled 80 percent of the land. There is a marked disparity in income distribution, and poverty is pervasive, particularly in the large indigenous community. Approximately 83 percent of the population lives in poverty; this figure rises to 90 percent among the indigenous. According to the UNDP, 59 percent of the population live in extreme poverty. Combined unemployment and underemployment were estimated at 46 percent. Per capita gross domestic product was approximately \$1,763 for the year. Foreign aid is an important part of national income. Remittances from citizens living abroad continued to grow as a major source of foreign currency. In September when the eastern part of the country suffered the effects of drought and 80 percent of the year's harvest was lost, the Government declared a national disaster. In November the PDH censured both the President and the Vice President for failing to promote policies of economic development to prevent such a disaster.

The Government generally respects the human rights of its citizens; however, serious problems remain in some areas. During the year the Government removed two directors of the Presidential Commission on Human Rights (COPREDEH) in as many months. Some security forces committed extrajudicial killings. Some high-level officials covered up or obstructed efforts to investigate human rights abuses. On June 8, a court convicted an army captain, a retired army colonel, a former EMP specialist, and a Catholic priest for the 1998 murder of Catholic bishop and human rights activist Juan Gerardi Conedera. In June a nongovernmental organization (NGO) acting as legal representative for 11 communities whose inhabitants were massacred by

government forces in the early 1980's filed a criminal suit against the high command of the regime of former de facto president and current President of Congress, retired General Efraín Ríos Montt, alleging genocide and other crimes against humanity. The leader of the NGO was attacked and seriously injured within several weeks of filing the suit.

The U. N. Verification Mission in Guatemala (MINUGUA) reported increased signs of the participation of clandestine armed groups in illegal activities linked to employees of the Prosecutor's Office, justice system, and police. MINUGUA reported increases in violent deaths, killings in prisons, and "social cleansing" operations in which persons deemed socially undesirable (e.g., gang members, local delinquents, and released or escaped convicts) were murdered. Security forces tortured, abused, and mistreated suspects and detainees. Prison conditions remained harsh. After a massive jailbreak in June, the Government instituted a State of Alarm for 2 months, during which the rights to freedom of movement and legal representation, as well as protection against arbitrary detention were suspended in principle. On August 2, in response to violence associated with protests against tax increases, a state of exception was declared in Totonicapán; and the military patrolled the state capital for three days. In many cases, the prosecutorial and judicial system was unable to ensure full and timely investigations, fair trials, or due process. Arbitrary arrest and lengthy pretrial detention continued to be problems. Judges and other law enforcement officials are subject to intimidation and corruption. In May the U.N. Special Rapporteur for Justice noted a deterioration in the security of justice sector workers. Threats against judicial personnel, journalists, witnesses, labor organizers, and human rights workers heightened public insecurity. Parallel investigations, the obstruction of justice, threats, and intimidation also were traced to groups related to the Government. The MINUGUA noted that the majority of human rights violations were the result of the failure of the state to investigate and punish those who break the law. An estimated 15 percent of the violations derive from the obstruction of justice, particularly by police officers whose only punishment was to be rotated away from assignments where there were problems. Efforts to reform the judiciary continued; however, impunity remained a serious problem.

The Government achieved convictions in a few important cases involving past human rights violations; however, most human rights cases remained pending for lengthy periods without being investigated or languished in the courts as defense attorneys took advantage of the inefficient judicial system and filed numerous baseless motions and appeals to delay trials.

Allegations persisted that the EMP infringed on citizens' privacy rights by monitoring private communications.

MINUGUA continued to monitor peace implementation and human rights issues. The Government made some progress toward settling cases pending before the Inter-American Commission on Human Rights (IACHR). In May the Government reached an amicable settlement with victims of the Dos Erres massacre and in December fulfilled its agreement to make a 1.87 million payment (14.5 million quetzals) to the families of the victims. However, legal proceedings against the perpetrators of the massacre continued to languish in the courts. Violence and discrimination against women persisted, as did societal abuse of children and discrimination against persons with disabilities and indigenous people. Workers' efforts to form unions and participate in union activities were hindered by ineffective government protections. The Government approved a series of amendments to the Labor Code that provide important protection of labor rights in accord with international standards. In March a trial court convicted 22 persons on charges of coercion and illegal detention for the October 1999 holding at gunpoint of the leaders of the principal banana workers' union. Child labor and trafficking in women and children were problems. Lynchings and mob violence continued at a slightly higher rate than in 2000.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were allegations of politically motivated killings by government agents, and security forces committed some extrajudicial killings. The Government demonstrated some willingness to arrest and prosecute those responsible and achieved some convictions in high-profile cases; however, in many cases, the scarcity of law enforcement resources and a weak prosecutorial system prevented the Government from adequately investigating killings and other crimes or arresting and successfully prosecuting perpetrators (See Sections 1.c. and 1.e.). There is credible evidence of military involvement in two and police involvement in seven extrajudicial executions.

In September MINUGUA reported investigating 26 of the 43 allegations of extrajudicial killings received between July 2000 and June and confirming the validity of the claims in 18 cases. These figures represented an increase over the previous reporting cycle (October 1999 to June 2000) during which MINUGUA

investigated 15 of 21 alleged extrajudicial killings and confirmed 13. The report noted a number of extrajudicial killings by members of the police. Many of these cases involved accidental discharges of weapons, drunken misbehavior by on- or off-duty officers, questionable crowd control techniques, or poor judgment by officers who lost control of unstable situations involving angry crowds or persons resisting arrest. Some cases presented signs of premeditation and malicious intent. In some of these cases, there was effective investigation by both the police's Office of Professional Responsibility (ORP) and the prosecutors. In others, there was credible evidence of a cover up by police officers, the ORP, or both; and frequently investigations by the Prosecutor's Office were inadequate. ORP received 14 cases of homicide between January and July. MINUGUA also noted an increase in the participation of municipal officials, particularly auxiliary mayors, in extrajudicial killings--primarily lynchings.

On August 11, an appeals court in Retalhuleu upheld an 18 years and 9-month sentence against Edgar Leonel Rodas Vasquez, a former police officer, who was convicted of killing 13-year-old Elfrid Frank Vicente Tecun on September 1, 2000.

According to MINUGUA's September report, on May 25, 2000, men wearing military uniforms in a jeep marked "ZM12" (for Military Zone 12) detained Oscar Guzman Garcia and Jose Castaneda Alvarez along the highway between Palin and Escuintla. On May 28 and 29, respectively, the heads of the two men appeared in different tributaries of the Guacalate River. On May 31, the two decapitated bodies were located in the town of El Rodeo, Escuintla. Forensic tests showed that the men had been shot in the head. According to MINUGUA, both the Police Investigative Unit and the Prosecutor's Office investigated only the involvement of witnesses in the crime. Neither organization requested any information from military authorities. After receiving threats, one of the witnesses declined to testify in court, and eventually moved to a new location. Eleven months after MINUGUA began its investigation, the Ministry of Defense provided records of the movement of vehicles into and out of ZM12. This information contradicted the information originally provided by the authorities at ZM12 about the number and type of vehicles on the base. More than a year after the murders, there has been no explanation by the appropriate authorities of the two deaths, and there was no reported progress in the investigation.

There was no progress in the April 2000 killing of Denis Fredy Cucul Tun by police officer Rolando Salvador Rubio Choc.

There was little progress in the investigation of the March 2000 killing of off-duty police officer Sergio Barahona Arana in San Jose Acatemala, Jutiapa by Byron Florian Yanez and Jose Mendez Interiano, two police officers in a police patrol car.

There was no progress in the ongoing investigation by the Prosecutor's office into the February 2000 case in which police officers conducted a sting operation without a warrant against street vendors of pirated music recordings in an outdoor market in Guatemala City, killing one person, Francisco Ixcoy Osorio, and injuring others. In June 2000, a court released six police officers and three army soldiers. The police officers claimed that colleague Alfredo Saso Perez killed Osorio, and that two of their superiors--Commissar Virgilio Ramos and Chief of Operations Diones Arriaza Solis--used death threats and false testimony to organize a coverup to impede the prosecutor's investigation; however, the judge provisionally closed the case for lack of evidence. The Prosecutor's Office appealed the decision, and the Fourth Appellate Court rejected the appeal.

In some cases, detainees or prisoners died while in the custody of police officers or Investigative Unit detectives, apparently due to torture or abuse (see Section 1.c.). Following a June 17 jailbreak in which 78 prisoners escaped, 10 escapees were killed, often under questionable circumstances (see Section 1.c.). In March one inmate died after the authorities fired tear gas into the Santa Teresa women's prison (see Section 1.c.).

In March 2000, detainee Luis Armando Colindres was found dead in his cell at a police substation in Zone 12 of the capital, apparently the victim of strangulation. The police claimed that Colindres hanged himself, but the forensic report found injuries consistent with a struggle. A judge ordered the detention of police officers Santos Medardo Recinos Moran, Elman Avigail Garcia Pineda, and Jeremias Santiago Godoy Ramos on charges of homicide. On June 7, the judge granted a defense motion to modify the charges to material document fraud (altered police reports) and abandonment of duty, and released the defendants on bail. An appeal of these decisions was pending at year's end.

In May the authorities arrested two instructors of the military academy, Captain Hugo Rigoberto Orozco Pu and Lieutenant Angel Boanerges Carrera Sandoval, in connection with the November 1999 death of cadet Danilo Cardona Mejia, who died after being required to perform excessively rigorous physical exercise. It took 2 years before an arrest warrant was issued and served.

Although most cases from past years remained unresolved, there were some convictions during the year for past extrajudicial killings by members of the security forces. In many other cases there was little or no progress, often due to the tactics of defense attorneys who frequently abused the legal system by filing dilatory motions to derail impending trials against their military clients.

On June 8, a three-judge panel convicted three military officers, former EMP specialist Jose Obdulio Villanueva Arevalo; army Captain Byron Lima Oliva; and Lima Oliva's father, retired Colonel Byron Lima Estrada, of the 1998 murder of Bishop Juan Gerardi, the Coordinator of the Archbishop's Office on Human Rights (ODHAG). The court sentenced them to 30-year, noncommutable sentences. The court also found the bishop's assistant, Father Mario Orantes, guilty and sentenced him to 20 years' imprisonment. The defendants' appeals were pending at year's end. The court acquitted Margarita Lopez, the Bishop's cook. Because the murder occurred just 2 days after Bishop Gerardi delivered the final report of the Office's "Recovery of Historical Memory" Project (REMHI), which detailed many of the human rights abuses committed during the internal conflict and held the military, military commissioners, and civil self-defense patrol forces responsible for more than 90 percent of war-related human rights violations, most observers had suspected a political motive for the crime. The judges did not close the case. Instead, they called for further investigation into the material authorship of the crime; the role of the EMP chain of command; and investigation of those who obstructed justice, including seven military officers, two civilians, and four prison officials. They named Rudy Pozuelos, Andres Villagran Alfaro, Francisco Escobar Blas, Dario Morales Garcia, Carlos Rene Alvarado, Luis Alberto Lima Oliva, Julio Melendez Crispin, Edgar Carrillo Grajeda, Erick Urizar Barillas, Hugo Najera Ruiz, Santos Hernandez Perez, Erick Medrano Garcia, and Misael Chinchilla Monzon.

MINUGUA confirmed multiple complaints by judges, prosecutors, witnesses, and the Archbishop's Human Rights Office staff of numerous threats and acts of intimidation, including telephone threats, electronic surveillance, and observation by unknown individuals following them on foot or in vehicles (see Sections 1.e. and 4).

In February, less than 2 weeks before the scheduled opening of the trial, Judge Rudy Chin Rodriguez, who was named to the panel in July 2000, asked to be recused from the case on the grounds that a prior friendship with Father Orantes prevented him from being objective. Some justice workers interpreted the judge's request to be recused after having already been involved in the case for some months as unprofessional and needlessly casting doubt on the pretrial decisions in which he had taken part. However, the Association of Judges and Magistrates noted that the judge had on several occasions commented on the danger of hearing the case, suggesting that to do so could be life threatening.

Presiding Judge Eduardo Cojulun received a death threat on his answering machine several days before the trial opened. On March 16, two unidentified men jumped the fence of the home of Judge Yassmin Barrios. Unknown assailants also threw a live fragmentation grenade onto the back porch of her house the night before the trial began. Judge Barrios, her elderly mother, and a family friend were having dinner indoors when the explosion took place, and no one was injured.

On March 22, the trial began; however, the military suspects refused to appear in court and had to be brought in by force. During the trial, Ruben Chanax Sontay testified that retired Colonel Lima Estrada had recruited him to spy on Bishop Gerardi on behalf of military intelligence in exchange for a weekly payment. In June Noe Gomez, brother of witness Gilberto Gomez Limon, testified that military defense attorney Roberto Echeverria had approached him on several occasions with a bribery offer. The bribe was intended for his brother not to testify that he saw Villanueva leave the jail in Antigua the day of the murder.

With the completion of the trial, the appeal process showed signs of bogging down through a return to more dilatory motions. In July Villanueva's defense attorney, Irvin Aguilar Medizabal, submitted duplicate appeals. The move provoked a delay of the decision by the court of appeals on the merits of the argument, while the Supreme Court ruled that the lower court must consider both appeals. On July 18, appeals court Judge Wilwaldo Contreras decided not to step down when the Archbishop's Human Rights Office challenged his impartiality for his friendship with military defense lawyer Julio Cintron Galvez and for having presided over the decision to commute a 1996 homicide charge against Villanueva. However, in a reverse decision in November Judge Contreras asked to be excused from hearing the case, because he felt offended by the Archbishop Office's accusations.

The Presidential Human Rights Commission concluded negotiations in the settlement with the family of Pedro Sas Rompich, who was killed in 1996 by Villanueva, who was a bodyguard for then-President Alvaro Arzu at the time. Villanueva since has served a commuted prison sentence for the killing and spent most of the year in jail as one of five suspects in the murder of Bishop Gerardi. COPREDEH paid on behalf of the Government the court-ordered damages award to the victim's survivors.

In April 2000, the Supreme Court annulled an appellate court's December 1999 verdict in the 1995 Xaman massacre case and remanded the case back to the trial court for a retrial. On January 16, the Constitutional Court denied the motions to suspend the case by the defense attorneys for 15 of the suspects. A trial date was set for July 3, but additional dilatory measures by the defense blocked the trial. In July the trial again was suspended pending the resolution of three appeals from defense attorneys to the Constitutional Court.

Intimidation of witnesses continued to be a problem; there were credible reports of the killing and threatening of witnesses. MINUGUA noted in its 12th Report that approximately nine potential witnesses associated with the Gerardi case died from undetermined causes. Others, including former police agent Jose Mauricio Gonzalez, Ruben Chanax Sontay, and Juana del Carmen Sanabria, left the country due to threats and intimidation.

For example, on January 21, Luis Carlos Garcia Pontaza was found dead in prison, where he was in custody on charges of assault and bank robbery. He was one of the first persons to appear at the scene of the crime following the murder of Bishop Gerardi, and was named as a witness by EMP Captain Lima Oliva. Before his death, Pontaza claimed to have been visited in prison on two occasions by prosecutors (during the tenure of lead prosecutor Otto Ardon) accompanied by EMP agents, who offered immunity from prosecution and logistical assistance for future criminal activities in exchange for testimony implicating members of the Catholic Church hierarchy in the bishop's murder. The prosecutor assigned by the public ministry, Berta Julia Morales, quickly dismissed allegations that he was murdered. She argued that the death was a suicide stemming from emotional problems. The special prosecutor for organized crime publicly refuted Morales's claim. MINUGUA maintained that third parties were involved in his death to prevent him from linking state agents to organized crime.

The 1994 killing by police of four workers at La Exacta farm remained under investigation, and the criminal case remained suspended. The parties continued to seek a resolution through the IACHR's amicable settlement procedures. Negotiations continued regarding a settlement of the pending labor court charges, with intervention from the Labor Ministry and COPREDEH to install an Arbitrations Court to resolve the dispute. The Center for Legal Assistance in Human Rights (CALDH) continued to represent the families of the deceased, the injured, and those who lost their jobs and homes during the illegal eviction. In August 2000, the President signed an agreement with the IACHR in which the Government acknowledged its responsibility for failure to provide justice in the case and promised both to pay reparations and renew criminal investigations against those responsible for the violence. At year's end, an amicable settlement had yet to be negotiated. In a November report the International Labor Organization (ILO) Administrative Council urged the Government to take measures to investigate death threats against union leader Jose Luis Mendia Flores and to assure that he reoccupied his job in accordance with the judicial ruling. The ILO also noted the delay in the reinstatement of fired workers and the delay in justice in the case of four campesinos killed in 1994 for trying to organize a union.

On May 16, police detained Mario Rene Salazar, a suspect in the 1994 murder of Constitutional Court president Epaminondas Gonzalez Dubon. An appeals court ruling remained pending in the case.

On January 10, the court initiated the 8-day presentation of evidence phase of the trial of retired General Edgar Augusto Gody Gaitan, Colonel Juan Valencia Osorio, and Colonel Juan Guillermo Oliva Carrera, for the 1990 murder of anthropologist Myrna Mack Chang. In May five audiotapes and one videotape containing the confession of EMP member Noel de Jesus Beteta and implicating Godoy and Osorio, were lost due to a failure to observe standard chain of custody procedures. In July the court reversed an earlier decision to disqualify the previous 2 years of the process and set a date of October 10 for the trial to begin. In September defense attorney Fernando Gutierrez Mendoza filed motions questioning the reversal as well as the legality of various documents submitted as evidence, such as sections of the "Nunca Mas" document and the Historical Clarification Commission (CEH) report. In September the First Court of Appeals agreed to hear their arguments, delaying the opening of the trial. In October judges from the Third Criminal Court, Yassmin Barrios and Ruben Joachin fined Gutierrez for filing irrelevant motions, a decision which he also appealed. In November the Second Court of Appeals revoked the three provisional motions granted by the First Court of Appeals to the defendants and ordered that a date for the trial be rescheduled. By year's end, no date had been set.

On August 1, the Inter-American Court on Human Rights agreed to the June request of the IACHR that the court hear the Myrna Mack case due to excessive delays of the application of justice in the Guatemalan courts. The decisions of the IACHR and the Court imply that the state, not the individuals implicated in the case, are to be tried by the court. In September Foreign Minister Gabriel Orellano, himself a former defense attorney for the military suspects in the Mack case, named Francisco Villagran Kramer, Vice President during the Administration of Romeo Lucas Garcia (against whom genocide charges are pending in the Guatemalan courts), as Judge Ad Hoc to represent the Government at the Court. In September a request to review the Guatemalan Law of Appeals was added to the petition.

In the case of the 1982 military massacre at Dos Erres, Peten, prosecutors relocated abroad two key witnesses and their families in exchange for their testimony against their former army comrades. On March 17, former army Sergeants Favio Pinzon Jerez and Cesar Franco Ibanez testified before a judge about the massacre of more than 200 unarmed civilians. In their testimony, they implicated several former comrades and gave detailed accounts of the massacre, before leaving the country under witness protection from the Prosecutor's Office. Based on their testimony, prosecutors obtained arrest warrants against 16 former members of the implicated army patrol. Defense attorneys contested 10 of those warrants, arguing that their clients should be protected from prosecution by the National Reconciliation Law, which grants limited amnesty for certain acts committed during the internal conflict. On April 3, days before stepping down, the then-seated Constitutional Court upheld a procedural motion filed by defense attorneys in the Dos Erres massacre that under the Law of National Reconciliation, an appeals court must rule on whether the accused qualify for amnesty protection prior to issuance of an arrest warrant. However, the law specifically exempts human rights violators from amnesty protection. In an April 25 publication, MINUGUA reiterated the CEH and forensic evidence findings that the killing of unarmed civilians, including small children, clearly falls outside of the acts of war covered by the Law of National Reconciliation. In March 2000, the Government signed an agreement before the IACHR in which it recognized its institutional responsibility for the Dos Erres massacre. Represented by COPREDEH, the Government pursued settlement negotiations with the victims' survivors, who were represented by two NGO's--Families of the Disappeared in Guatemala (FAMDEGUA) and the Center for Justice and International Law (see Section 4). In the negotiations, the Government agreed in principle to prosecute aggressively the material and intellectual authors of the massacre, pay for reparations and other community assistance for the survivors, create a historical document that recounts what happened at Dos Erres, and erect a memorial in honor of the victims. In December 2000, in accordance with recommendations of both the IACHR and the Inter-American Court, the Government created a Special Commission to locate and identify families and victims of the Dos Erres massacre. On May 3, COPREDEH signed an amicable settlement with 301 victims of the massacre. The \$1.87 million settlement (14.5 million quetzals) represented reparations only and does not affect the ongoing legal case in the courts. On December 10, the Government made the payment. As part of the settlement, COPREDEH broadcast a short video on the massacre; FRG hard liners protested and the president of the organization was replaced (see Section 4).

On May 22, police arrested Jaime Aurelio Tun Luch, a former guerilla commander whose warrant for arrest had been outstanding for more than 10 years. Luch is accused of having participated in the 1988 massacre of 22 persons in El Aguacate, Chimaltenango. Two days later, he was released after his lawyer successfully argued that he was immune from prosecution under the Law of Reconciliation. However, in September the Supreme Court ruled the massacre at El Aguacate an act of genocide, and as those who commit such acts are excluded from protection under the law, the court ordered that the case proceed against the five guerrillas (including Luch) accused of having committed the massacre.

On May 4, two assailants abducted and detained at gunpoint the head of FAMDEGUA and her driver (see Section 4).

On June 22, the lawsuit filed by the CALDH on behalf of 10 communities in Quiche and Chimaltenango whose citizens were massacred by government security forces between October 1981 and March 1982 was transferred from prosecutor Carlos Ramiro Coronado to Mario Leal. The suit alleges crimes, including genocide, committed by the high command of the regime of former President Fernando Romeo Lucas Garcia. In addition to Fernando Lucas Garcia, the suit also names his brother (and former army Chief of Staff) Benedicto Lucas Garcia and former Defense Minister Luis Rene Mendoza as defendants.

On June 6, a suit similar to the Lucas Garcia suit was filed against the regime of former de facto president and current President of Congress retired General Efraín Ríos Montt (see Section 4). Anselmo Roldan Aguilar, the legal representative of the Association for Justice and Reconciliation (an NGO) who presented the case, was attacked and severely injured within several weeks of filing the suit. There was no progress in the investigation of the assault during the year.

During the year, the Supreme Court ordered the Prosecutor's Office to conduct a new investigation into the 1993 murder of newspaper publisher and former presidential candidate Jorge Carpio Nicolle and three associates. Suspect Francisco Ixcoy Lopez, former Civil Defense Patrol member, remained at large, despite the fact that the Carpio family had located him and informed the authorities of his whereabouts. The criminal case remained open, but the Prosecutor's Office made no efforts to advance the case and the victim's family withdrew the charges. The case before the IACHR for the Government's failure to provide justice remained pending. The family of Jorge Carpio also requested that the IACHR send the case to the Inter-American Court, since they believed that justice was not being served in the Guatemalan courts. The Court accepted the petition in November. It is estimated that the Court may call as witnesses 20 or more former military officers and civil patrollers, as well as high-level government officials.

There was no progress on the investigation into the intellectual authorship of the 1985 murder of foreign

journalist Nicholas Blake despite orders from both an appeals court and the Supreme Court. The three suspects, other than Vicente Cifuentes who was convicted for the murder in January 2000, remained at large at year's end, despite having been located by police and prosecutors in May 2000.

In November 2000, the Government reached a settlement with the Inter-American Court of Human Rights to pay reparations to the survivors of the 1990 killing of three street children--Julio Roberto Caal Sandoval, Jovito Josue Juarez Cifuentes, and Anstraun Villagran--and two indigent adults, Federico Clemente Figueroa Tunchez and Henry Giovanni Contreras, by police officers (see Sections 4 and 5). In 1999 the Court had ruled that there was sufficient evidence that police officers Samuel Rocaél Valdes and Nestor Fonseca were responsible for the deaths. The Court also ruled that the Government failed to protect the rights of the victims and provide them with justice. On January 10, the victims and their surviving family members received the Court-ordered reparations from COPREDEH.

There was no progress in the investigation into the 1999 kidnaping and murder of Edgar Ordonez Porta. In August the victim's brother, who had pursued an investigation into the involvement of members of Military Intelligence in the murder, left the country indefinitely after receiving threats to his family's safety.

In September members of FAMDEGUA reported that the Public Ministry still had not completed their investigation into the "Military Diary". When the document's existence was disclosed more than 3 years ago, FAMDEGUA assisted families who had members on the list in the filing of 75 criminal cases against the military. FAMDEGUA representatives stated that investigations are stalled partially due to fears of reprisal that prevent the victims' families from actively pursuing the cases.

Exhumations of clandestine cemeteries continued throughout the year. Most of the bodies recovered have been those of victims of military or paramilitary killings in the early 1980's. Forensics groups use the information obtained from the exhumations to verify eyewitness reports of massacres--of which the CEH recorded 669--and to determine, at least in general terms, who might have been responsible. Forensic research and DNA testing have identified some of the remains. The forensic evidence also has been used in some criminal cases.

In February the Guatemalan Forensic Anthropology Foundation (FAFG) located 23 human remains in a former military camp in San Jose Poaquil, Chimaltenango. The Coordinator for Guatemalan Widows noted that family members of the victims were threatened before going to identify the remains of their loved ones. In March the remains of 24 massacre victims, primarily women and children, were reinterred in Pujujil, Solola. In May the FAFG unearthed 65 remains from some 20 communal graves in the communities near a former military camp in San Martin Jilotepeque, Chimaltenango. In January members of the FAFG noted that according to testimony, soldiers left the camp in 1986, but returned in 1989 to clean up the site. In June a total of 28 victims of a 1982 massacre by the army at Chiche, Quiche were reinterred. Also in June, the FAFG unearthed 21 victims of both the guerillas and the army in common graves in the town of Sepur Zarco, Izabal. In July the remains of 21 persons killed in a 1982 massacre conducted by the Guerilla Army of the Poor in Salacuín, Alta Verapaz were reinterred. Also in July, 40 remains were exhumed from a former military camp in Zacualpa, Quiche. In addition to 30 adult remains, 8 adolescent and 2 children's remains were located. In August the Mutual Support Group NGO announced that along with the FAFG, it had exhumed 19 cemeteries and located 28 remains of men, women, and children in Colotenango, Huehuetenango. According to the Diocese of Quiche, through the first half of the year, 72 cemeteries were exhumed in Nebaj. In them were located 114 remains, of which 51 were men's, 28 were women's, and 35 were children's. Also in August, indigenous leader and 1992 Nobel Peace Prize laureate Rigoberta Menchu Tum announced that she would solicit the assistance of a Mexican forensic anthropology team to work in conducting exhumations.

In December 2000, a Spanish court decided not to hear a criminal complaint filed in 1999 by Rigoberta Menchu against eight former military and civilian leaders for human rights abuses including genocide, torture, and terrorism committed during the 36-year internal conflict. The defendants included former de facto president and current President of Congress retired General Efraín Ríos Montt, former President and retired General Fernando Romeo Lucas García, and former de facto President Oscar Humberto Mejía Víctores. The decision was based in part on the fact that it was not clear that justice in the case could not be achieved in Guatemala, since a genocide case had yet to be tried by the country's court system.

There were plausible allegations of politically motivated killings by nonstate actors during the year, with only limited willingness on the part of prosecutors to investigate such murders. In some of these cases, evidence was not sufficient to conclude whether the killing was politically motivated.

On November 11, 2000, the son of retired General Otto Pérez Molina, Lieutenant Otto Fernando Pérez Leal, was attacked while driving with his wife and 8-month-old daughter. On February 21, several days before Pérez Molina was to announce the formation of a new political party, masked gunmen attacked and slightly wounded

his daughter Lissette Perez Leal de Solorzano. The same day, masked gunmen shot and killed Patricia Castellanos Fuentes de Aguilar who had just departed her house after meeting with Rosa Maria Leal, Perez Molina's wife. On May 15, Castellanos' widower, Francisco Aguilar Alonzom, who dedicated himself to clarifying the circumstances of his wife's death and created a citizens group opposed to violence and impunity, was shot and killed in his car. The prosecutors assigned to the cases, including Berta Julia Morales, failed to develop plausible motives for the murders despite evidence of a pattern of killings conducted by a sophisticated and well-coordinated organization. The Interior Minister prematurely dismissed the possibility of a political motive for the crimes. MINUGUA uncovered evidence of a separate, parallel investigation by the National Defense Military Staff—which normally does not investigate criminal cases. Human rights groups claimed that the killings were politically motivated.

On May 5 Sister Barbara Ann Ford was killed in Guatemala City. The crime was characterized by the PNC and the Minister of Interior as an attempted carjacking, but various human rights groups did not rule out the possibility of a political motive. Ford worked on mental health projects with war victims in Quiche and participated in the REHMI project. In November Ford's colleague, Sister Virginia Searing, became a plaintiff in the case. Little progress had been made in the investigation at year's end.

There was little progress in the investigation of the February 2000 murders of Erwin Haroldo Ochoa Lopez and Julio Armando Vasquez, two environmentalists working for the National Council for Protected Areas, a governmental environmental protection agency. In August 2000, retired army Colonel Sergio Ontoniel Ponciano was arrested and charged with the murder. However, there was no further action in the case during the year.

The investigation into the October 2000 murder of Maura Ofelia Paniagua Corzantes, civil law coordinator for the law clinic at San Carlos University, was ongoing at year's end. In February, the prosecution team solicited telephone records and sought the cooperation of police investigators and other prosecutors in its ongoing investigation.

In May the Prosecutor's Office appointed a special prosecutor, Leopoldo Liu, to investigate killings of and threats against lawyers, judges, and prosecutors (see Section 1.e.). The Supreme Court contracted a team of bodyguards trained in providing personal security. At year's end, some 60 judges received such protection.

There were no developments during the year in the investigation of the 1999 murders of Zacapa Municipal Workers Union leaders Robinson Morales Canales and Angel Pineda, both of whom had protested labor rights violations and corruption in the Zacapa mayor's office.

There were allegations of possible acts of social cleansing in connection with the July prison break (see Section 1.c.).

The number of attempted lynchings and resultant deaths increased compared to 2000, but did not reach the very high levels of 1999. MINUGUA reported 75 lynchings by year's end, which resulted in 27 deaths and 140 injuries. These figures are significantly higher than in 2000, when 52 lynchings resulted in 32 deaths and 83 injuries. Since MINUGUA began tracking individual lynching cases in 1997, up until June of 2001, it recorded a total of 251 cases. Of these, only 48 of them, or 13 percent, have gone to trial. In only 29 cases have sentences have been handed down. Of these sentences, 20 cases, or 6 percent of the total, resulted in convictions.

MINUGUA noted that lynchings, especially those that result in the death of the victims, increasingly are planned and premeditated events. There continued to be cases in which municipal officials or other local leaders were involved in lynching attempts. The large majority of the attacks took place in rural areas most severely affected by the internal conflict, which still suffer from the lowest levels of human development. MINUGUA has identified a number of important causes for the continued incidence of lynchings. First, the State has failed persistently to provide justice or security services in the interior of the country. Statistically, there is a direct relationship between the distance that a lynching occurs from a municipal capital and the probability that the result of the lynching will be the death of a victim. Second, civil authority has been slow to supplant that of the Civil Defense Patrols, which during the armed conflict conducted summary hearings in the town square and publicly executed alleged criminals or guerrillas. In July the Supreme Court President corroborated MINUGUA's finding that former members of the Civil Defense Patrols were involved in a significant number of lynching cases.

There were numerous attempted lynchings in which police were able to save the victims before they were wounded severely or killed. In March some 200 persons tried unsuccessfully to lynch a local justice of the peace in Ixchiguan, San Marcos. In July a lynch mob in Chahal, Alta Verapaz, threatened another judge. After intervening successfully to stop the lynching, the mayor and police requested that the Supreme Court recall the

justice of the peace. Reportedly, the organizers of the attempted lynching were opposed to the autopsy proceedings the justice had ordered for a supposed suicide victim. In December residents of Ulpan, Alta Verapaz attempted to burn alive four men accused of killing an eleven year old girl. Police and fire department officials negotiated the release of the men for arrest. In April a court convicted Camilo and Oscar Francisco de Leon Alvarez for a 1996 lynching in Momostenago in which 4 persons were killed. The court sentenced them each to 100 years in prison.

On June 25, the court absolved three persons accused of stoning a Japanese tourist to death in April 2000. The court requested that the investigation continue against Serapio Chavez and Juan Ramos, whose responsibility in the case remained unclear.

On March 8, the judge overseeing the investigation into the July 2000 lynching of 8 men at a roadblock near Xalbaquiej, Chichicastenango agreed to issue 41 arrest warrants for the alleged ringleaders at the Prosecutor's Office's request. However, by year's end the police had not arrested anyone.

While the justice system has been slow to convict and imprison perpetrators of lynchings, the Government has demonstrated an increased willingness and ability to investigate and prosecute lynching offenders. According to press reports, in July, the high impact court in Quetzaltenango handed down 50-year prison sentences to Cruz Sojom Coti, Alonso Tulul Guarchaj, Francisco Balux Lopez, and Francisco Tahay Tzaj for a 1997 Nahuala lynching.

In January MINUGUA along with the justice system, carried out an educational campaign on lynchings at workshops in Solola. The campaign was designed to strengthen the role of educators, community leaders, and local officials in the prevention process by explaining the functioning of judicial procedures. Despite improvements in the Government's response to deter lynchings and punish those responsible, growing public feelings of insecurity led some communities to form Local Security Councils--as provided for in the Law on the National Civilian Police--to protect themselves from criminal activity. These organizations were created primarily in Quiche department, with others believed to exist in Baja Verapaz, Solola, Huehuetenango, and San Marcos departments.

b. Disappearance

There were no reports of politically motivated disappearances during the year; however, MINUGUA verified two cases of the disappearance of persons during detention by security forces.

The PDH reported nine cases of forced disappearance during the year. Many of the victims were members of gangs linked to prisoners who escaped from the penitentiary in Escuintla in July.

Neither the Directorate General of the police nor the Prosecutor's Office took any actions during the year to clarify the May 2000 forced disappearance of Mynor Pineda Agustin after his arrest with two other persons for kidnapping.

On May 8, the Human Rights Ombudsman's Office concluded that the April 2000 disappearance of University of San Carlos professor Mayraz Gutierrez Hernandez was a "crime of passion" committed by someone who knew Gutierrez. However, these conclusions contradicted a number of elements of established evidence, including those that the Human Rights Ombudsman's Office itself had issued earlier. In its 12th report, MINUGUA expressed the concern that the same manipulation that distorted the Prosecutor's Office investigation appeared to have influenced the Human Rights Ombudsman's Office findings as well. Gutierrez was a social activist whose political activities included social research into international adoptions, women's rights, and a range of human rights causes. Prosecutors had pursued inaccurate theories that Gutierrez was an active member of a guerrilla organization and either left voluntarily or was kidnapped by her guerrilla comrades. The case was pending before the IACHR at year's end. In August prosecutor Sara Payes announced that she would begin a series of exhumations designed to locate Gutierrez's body.

On September 5, retired General and former de facto president from 1983 to 1985, Oscar Mejia Victores, went before a trial court for his alleged role in the disappearance of Fernando Garcia in 1984. The case was brought by survivors of the victim as well as various human rights organizations, including the Archbishop's Human Rights Office, the Human Rights Ombudsman, and the Mutual Support Group. The judge in the case determined that there was insufficient evidence presented to try Mejia Victores, but the decision immediately was appealed.

Disappearances in high-profile cases from past years remained unresolved at year's end. For example, there was no progress in the investigation into the 1999 disappearance of prominent indigenous leader and FDNG

party member Carlos Coc Rax. Nor was there progress in the disappearance cases of Arnoldo Xi, an indigenous- and peasant-rights activist who reportedly was shot and abducted in 1995; Lorenzo Quijé Pu, a human rights activist who disappeared in 1994; and Juan Jose Cabrera ("Mincho"), the guerrilla commander reportedly captured by the EMP in 1996 while taking part in a kidnapping.

In June groups associated with the National Human Rights Coordinator filed 5,000 habeas corpus briefs on behalf of individuals who disappeared between March 6, 1965, and October 19, 1993. According to a spokesperson from one of the human rights organizations, the majority of the individuals were young persons between the ages of 20 and 25 when they disappeared. The briefs were processed immediately by the Supreme Court and sent to the sentencing court where they would be investigated. Of the nearly 45,000 cases of disappearances noted by the CEH, the Mutual Support Group alone has documentation of some 10,000 cases. It noted that over the last 10 years, even without a national exhumation plan in place, more than 1,000 remains have been unearthed in exhumations (see Section 1.a.).

In August 2000, the Archbishop's Human Rights Office released its report on children missing since the armed conflict. The report stated that of the documented cases, 86 percent were of forced disappearances and the remaining 14 percent were attributable to diverse causes associated with the conflict, such as communities fleeing attack. Of the documented cases of forced disappearances, the military was responsible for 92 percent of the cases; Civil Defense Patrols were responsible for 3 percent; guerilla forces were responsible for 2 percent; and the remaining 3 percent could not be attributed to anyone. In 68 percent of the forced disappearances, boys and girls were taken directly to a military post of one kind or another. Approximately 93 percent of the victims were Mayan children, the majority of whom were between 1 and 4 years old. On June 11, governmental entities such as COPREDEH as well as NGO's formed the National Commission for the Search for Disappeared Children, in accordance with one of the recommendations of the Historical Clarification Commission. The Commission is to search for children who disappeared both during the conflict and since. In October the Archbishop's Office sponsored the First Encounter of Relatives of Disappeared Children, which brought together family members of those children who disappeared during the armed conflict.

In December 2000 the Inter-American Court had ordered the Government to investigate, publicly identify, and try those responsible, and award damages for its violations of the rights of guerrilla leader Efraim Bamaca Velasquez in 1992. In early May, the family agreed in principle to enter into negotiations with COPREDEH to reach an amicable solution to the case. In April there were credible reports of a break-in and theft of a computer from the home of a human rights activist involved with the disappearance as well as renewed death threats against one of the case's key witnesses and his family. In November during an audience with the Court to discuss the awarding of damages for psychological trauma caused by the disappearance and death of her spouse, Jennifer Harbury asked that the Government be ordered to relinquish Bamaca's remains. The resolution is pending.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution provides for the integrity and security of the person and prohibits physical or psychological torture of prisoners; however, there were credible reports of torture, abuse, and other mistreatment by members of the PNC during the year. These complaints typically involved the use of excessive force during arrests, interrogations, or other police operations. Criminal Investigative Service (SIC) detectives continued to torture and beat detainees during interrogation to obtain forced confessions. The Government and the PNC showed decreased willingness to investigate, prosecute, or otherwise punish officers who committed abuses. The PNC transferred some cases of alleged torture to the Prosecutor's Office. There were a significant number of murder victims whose bodies demonstrated signs of torture or cruel treatment (see Section 1.a.).

In its 12th Report on Human Rights, MINUGUA investigated 33 complaints of torture, of which 27 were confirmed. These figures are nearly double those of the previous reporting cycle, during which MINUGUA investigated 13 complaints of torture and confirmed 12 cases. The majority of these cases involved abuse or mistreatment of suspects and detainees by PNC officers or SIC detectives. The police sometimes punished the use of excessive or illegal force by officers, but more often offenders merely were transferred to a different location. In several cases, there was credible evidence that police officers and their superiors altered documentation, falsified evidence, bribed and intimidated victims and witnesses, or otherwise obstructed the investigation and prosecution of police misconduct. A total of 467 PNC officers had been dismissed by year's end.

On January 21, Luis Carlos Garcia Pontaza, a witness at the scene of the murder of Bishop Gerardi, was found dead in prison (see Section 1.a.).

On April 8, police unlawfully detained Julio Alberto Casasola and William Cotom Rodas for the theft of a vehicle. They were both interrogated and tortured by SIC detectives. Although suffering from grave injuries,

they were transferred to a detention center and it was not until the following day that they were taken to a hospital to receive medical attention. Casasalo died April 11 as a result of the blows that he received.

On June 7, a judge ordered the released of three officers originally charged with the strangulation of Luis Armando Colindres (see Section 1.a.).

In February 2000, Augusto Marroquin Carreto was taken from his cell in the Quetzaltenango detention center by SIC detectives and interrogated about his alleged involvement in the death of another prisoner. The detectives beat and tortured him until he confessed. Several high-ranking PNC and SIC officers attended the interrogation. In February 2000, SIC officers from Quetzaltenango tortured Pablo Albani Edelman Bethancourt and Alex Guillermo Reyes Monterroso into confessing their membership in a gang of car thieves by beating them and asphyxiating them with rubber hoods.

Casa Alianza reported that although the number of incidents of abuse of street children was roughly equal to 2000 levels, relatively few incidents were committed by members of the security forces (see Section 5). Most acts of violence against street children were committed by individuals, by private security guards, or in gang- and drug-related violence among street children. Casa Alianza reported 45 cases of abuse of street children, in which 16 police officers and 2 private security guards participated. Prosecutions and convictions for crimes against street children continued to be very rare.

Following the extensive August protests against tax increases, a judge announced that at least 15 police officers would be tried on charges of brutality and use of excessive force (see Section 2.b.).

There were no reports that police used excessive force in evictions of landless peasants occupying farms in attempts to gain land during the year. Because of violent confrontations in the past, the Government continued its policy of securing an eviction order from a court, informing the occupiers of the coming eviction, and sending in a lightly armed police contingent to end the occupation by using dialog and verbal persuasion. The Ministry of Interior carried out numerous evictions without incident during the year using this policy.

Corruption continued to be a problem, and there were credible allegations of involvement by individual police officers in criminal activity, including credible allegations of police involvement in kidnappings. In October Humberto Portillo Gonzalez and Marvin Haroldo Ramos Rosales were arrested for the October 9 kidnapping of a prominent businessman's wife. Portillo and Ramos were employed by the Protection and Security Service, a unit of the PNC that provides protection to public officials and diplomats. Police continued to search for a third officer who was also allegedly involved. Allegations continued that, rather than discipline its officers, the police often just transferred them to a different part of the country. Transfers are a common practice and are used to avoid personal problems, corruption, and questions of mistreatment of detainees. Impunity for police who commit abuses remained a serious problem.

All PNC members were required to meet minimum education requirements and pass an entrance examination. Staff of the former National Police (PN) who wish to integrate into the new police structure must complete successfully a 3-month retraining course. In practice, however, many of the 9,376 former PN who are now serving in the PNC have not taken the course. The Director of Personnel attributes the problem to budget cuts and the constant turnover in PNC leadership that affects the personnel system. There also were screening procedures to detect suspected human rights violators and officers involved in criminal activities. New recruits had to complete a 6-month training course before entering on duty. The training course, developed with the assistance of MINUGUA, foreign governments, and international organizations, includes extensive human rights components. However, some observers claimed that the retraining course was not sufficiently rigorous, and that relatively few members of the PN were screened out during retraining, allowing the incorporation of some poorly qualified PN members into the ranks of the PNC.

Pursuant to the Peace Accords, former members of the military were eligible to apply for positions in the police but were required to apply like other civilians and complete the 6-month training course required of all civilian applicants. However, the Government incorporated some former members of the military and the former Ambulatory Military Police (PMA) into the ranks of the PNC upon the completion of only the shorter course intended for current members of the PN. A total of 10,144 officers from prior security forces have taken the retraining course since its inception. The former PMA members were not subjected to a competitive selection process but were screened carefully before they were allowed to enter the program. In May 150 former PMA agents protested in front of the Congress, demanding \$6,410 (50,000 quetzals) each as part of a severance package that they claimed was due them. In November the Government reached the 1999 goal established by the Peace Accords of putting 20,000 police on active duty and at the year's end PNC officers numbered 20,452. Police representation outside of the capital is improving, but approximately two-thirds of those police districts remain 60 to 75 percent staffed. Approximately 10 percent of the force is female and 14 percent indigenous.

In 1998 the PNC accepted some 60 police candidates from indigenous communities in the Ixil region--approximately 30 of whom graduated on their first attempt--to ensure that PNC personnel in those communities would be proficient in the local language and able to operate effectively in those communities. According to MINUGUA, approximately 7 percent of PNC officers speak an indigenous language. Efforts have improved to assign officers that speak an indigenous language to a town where their skills can be put to use. Approximately 75 percent now work in the geographic area of their particular linguistic competency.

According to the Interior Ministry, there were more than 25,000 private security agents. In September, MINUGUA reported the existence of 81 legally functioning private security companies and another 73 that had not completed the required procedures. There are reportedly no investigations underway by authorities, despite awareness of the problem. In January the Association of Private Security Firms acknowledged that their industry fell under control of the Interior Ministry according to Congressional Decree 73-70 and Decree 11-97 of the Law on National Civilian Police.

The ORP performs internal investigations of misconduct by police officers. Despite greater numbers of police officers on duty throughout the country, and less public apprehension about filing complaints against the police, the total number of such complaints remained roughly the same as the previous year. The ORP has a strong corps of investigators and has shown a considerable degree of improvement in professionalism; however, their independence and effectiveness has been hampered to some degree by the lack of support from the PNC leadership and there were isolated cases in which ORP investigators appeared to participate in cover ups of police misconduct. The ORP reported that in 2001, it received 1,693 complaints, including 29 cases of homicide, 131 cases of abuse of authority, 136 cases of threats, 201 cases of robbery, 7 cases of kidnaping, 63 cases of unlawful detention, and 150 cases of corruption. The ORP received 1,581 complaints in 2000, including 43 of homicide, 222 complaints of abuse of authority, 104 of robbery, 141 of corruption, 108 of improper conduct, 107 of threats, and 72 of illegal detention. In cases in which sufficient evidence suggested that criminal acts were committed, ORP investigators forwarded them to the Public Ministry for further investigation and prosecution. In 2001 the PNC fired 467 officers. By year's end, the ORP had closed 878 cases, compared with 870 cases in 2000; the investigators found 35 percent of officers culpable and exonerated 65 percent. Most observers still considered the PNC to be a significant improvement over the PN.

A study by the human rights NGO, Mutual Support Group, found that in the month of February, 75 persons were killed and 100 wounded by gun shots compared to 45 killed and 46 wounded in February of 2000. A compilation from the same source of figures for the first 6 months of the year revealed: 14 cases of extrajudicial executions, 479 murders, 255 gunshot wounds, 25 rapes, 23 kidnapings, and 22 disappearances. A police study of crime over the 9 months from August 1, 2000, through April 30 revealed homicides numbering 2,328 or the equivalent of 1 homicide for every 5,000 persons. The report found that nearly 70 percent of all crime took place in the capital and the primarily ladino southern and eastern parts of the country.

No active members of the military serve in the police command structure, but in March 2000, Congress enacted a law enabling the Government to employ the army to continue to support the police temporarily in response to an ongoing nationwide wave of violent crime. In 1998 and 1999, President Arzu had ordered the army to support the police temporarily. While these measures were popular politically, given the public's preoccupation with crime and security, they left open the possibility of renewed military involvement in internal security functions, a role prohibited by the Peace Accords. Under the existing law, military personnel are not subordinated clearly to police control during joint patrols or operations.

There was been no progress in the case of Sister Dianna Ortiz, who was kidnaped, tortured, and sexually abused by a group of armed men in 1989. The prosecutor on the case, Braulio Guzman, renewed his efforts to finalize the investigative phase of the trial in the fall of 2000 despite logistical constraints. At year's end, there had been no response from the victim or her legal counsel to the renewed request. The court is empowered to close the case for lack of evidence should nothing further be submitted.

On March 13, Lieutenant Colonel Luis Alberto Linares Perez filed a complaint with the Prosecutor's Office against Minister of Defense, Eduardo Arevalo Lacs, Army Chief of Staff, Lionel Mendez Estrada, and Army Inspector General, Carlos Eddi Radford Bonilla for abuse of power, privation of liberty, unwarranted discharge, and cover up of corruption. During a meeting at the army's Center for Military Studies, Lieutenant Colonel Linares asked top officials about the status of investigations into alleged corruption at the Bank of the Army, the pension system, and the military medical center. Linares's question related to the Prosecutor's Office's investigation of 9 generals and 10 colonels for alleged corruption and fraud involving about \$6 million (45 million quetzals). Brigadier General Mario Mamerto Hernandez Ponce and Colonel Alfonso Ruiz Alvarez, in particular, face charges of fraud and misappropriation of funds belonging to the military pension fund. Lieutenant Colonel Linares was sanctioned by his superiors for the disrespectful manner in which he represented his questions and was put into detention for 15 days. In his criminal complaint, filed with the Special Prosecutor Against Corruption of the Public Ministry, Linares noted that his and his family's safety had been threatened when someone fired shots at his home. Eventually Linares was reassigned from the capital to

the Military Reserve Command in Totonicapan. According to MINUGUA, the Directorate for Intelligence of the National Defense Staff contacted several officers to deter them from testifying when summoned by prosecutors and pressured Linares to drop the case. The original prosecutor assigned to the case was reassigned without explanation.

Prison conditions remained harsh but generally not life threatening. The prison system continued to suffer from a serious lack of resources, particularly in the areas of prison security and medical facilities. In November 2000, the Government reported that prison capacity nationwide was 6,170 persons and that there were approximately 6,700 inmates. The majority of the prisoners were not serving prison terms but were held in pretrial detention. Pretrial detainees often are separated from convicted criminals. Many are released either on good behavior or because they never are sentenced. Some institutions were overcrowded; for example, in August 2000, the Preventive Detention Center for Men in Guatemala City was approximately 75 percent over its designed capacity. In February 2000, a project to improve prison infrastructure began, involving improvements to fences and walls to prevent further escapes and installation of better water, electricity, sanitation, and emergency systems. In the spring of 2000, a new maximum security facility opened. Prisoners continued to complain of inadequate food. Corruption--especially drug-related--was widespread. Prison officials reported frequent escape attempts and other manifestations of prisoner unrest. The frequency of jailbreaks continued to be a matter of serious public concern, although the number of successful escapes appears to have declined. Several escaped convicts eventually were recaptured. The military continued to provide perimeter security for various prisons, as it has done since 1998.

On March 8, the Interior Minister fired the Director of the Preventive Detention Center in Zone 18 of the capital, Arimiro Rivas Urizar due to charges of corruption. According to a police officer, cell phones, pistols, and knives were found in the cells of prisoners allegedly planning a jailbreak.

Shortly after taking office in March, Yuri Bucaro, the Director General of the Penitentiary System, told reporters that the system had grave problems, and that he was concerned about jailbreaks. Among other problems, he identified a lack of professional training among prison staff, administrative chaos within the bureaucracy, corruption and an inability to fire corrupt employees, a lack of physical control inside of prisons, and a chronic shortage of the resources needed to effect meaningful organizational change. Of 950 guards on the payroll, at any given time only 237 are working in 1 of the 17 facilities around the country. The average ratio is 31 prisoners per guard. On April 24, Bucaro announced the creation of a School for Prison Studies to address the need for professionalization of the prison system's staff.

On June 17, 78 prisoners escaped from the maximum-security facility in Escuintla without having to break a single lock. The primary organizers of the break reportedly arranged to be moved from one sector of the prison to another with the assistance of corrupt judges (see Section 1.e.). In response to the initial jailbreak, the Government instituted a State of Alarm that lasted from June 18 to August 18, during which rights to legal detention, search and seizure, and freedom of movement were suspended in principle (see Sections 1.d. and 1.f.). While the justification for the State of Alarm was to facilitate the arrest of the 78 escapees, by the year's end, authorities had only recaptured 46, 10 were killed, often under questionable circumstances, and 22 others remained at large. On August 14, four escapees were shot and killed in zone seven of the capital. According to investigators, a rival gang was responsible for the attack. Numerous activists raised the question of whether the killings were instead an act of social cleansing by authorities or parastatal elements.

According to press reports, the organizers of the June 17 break paid off prison officials, including then-director of the facility Edwin Nehemias Gonzalez Miranda. Gonzalez's wife, Heydi de Leon Hernandez, worked as a guard in the prison, and also was included in the investigation of the breakout. Ultimately, 20 guards, 2 wardens, the director, and the vice director of the prison were taken into custody for allegedly collaborating with the breakout. In its September report, MINUGUA noted that the prison break had been planned for months and was made possible through extensive collaboration on the part of authorities from the prison system and the Interior Ministry.

The unit from Military Zone 12, charged with providing perimeter security at the prison, was suspiciously not present at the time of the escape on a Sunday afternoon. On June 27, military units took over the maximum-security facility in Escuintla. On July 3, the Interior Minister established a Consultative Commission on the National Penitentiary System to analyze the existing system and come up with recommendations for systematic improvements. On September 6, the Commission issued its preliminary report to the President. It found that prisoners often maintained control inside of prisons because they are better organized than guards. The report identified a high level of corruption and low level of technical training among guards. The Commission also identified three systemic shortcomings: Lack of independence of the prison system from the Interior Ministry; a lack of legislation clearly establishing technical, juridical, and doctrinal criteria; and a serious problem of under-funding.

The police reportedly thwarted a second jailbreak in Escuintla on September 6. When police went into the

prison, they found that the drugs, electronic equipment, and weapons that they thought they had removed were once again present in abundance, clearly demonstrating that corruption continued to allow extensive illicit trafficking into the prison.

On September 23, another attempted jailbreak left 10 prisoners injured after an exchange of gunfire with prison guards at the Canada Prison Farm in Escuintla. The prisoners appeared to be taking advantage of the chaos of the activities planned to celebrate Prisoner's Day to make an escape. In their investigation, police found fire arms, drugs, and bottles of liquor inside the facilities.

The 433 female prisoners in the penal system generally are held in facilities separate from men; however, the conditions are equal. The Government permitted access to prisons by family members.

On November 10, inmates of the Orientation Center for Women in Fraijanes rioted after the director restricted the visitation policy to permit family members (and not friends or boyfriends) to enter. The inmates further protested that they had been beaten by the guards for opposing the regulation. One woman was injured by firearm and allegedly the tear gas used by the guards to subdue the rioters intoxicated 12 children who reside at the prison with their mothers. Security did not permit the entry of emergency medical personnel to attend to the injured.

In March women inmates in the Santa Teresa prison reacted violently to more restrictive security measures. The women complained of being physically and sexually abused by prison authorities. One inmate, Estela Castaneda died as a result of injuries sustained from a tear gas canister fired into the prison. Again in April, the women inmates of Santa Teresa took five guards hostage in protest over the living conditions inside the prison and alleged abuse by security officials. The riot lasted more than six hours and culminated in a shootout between the prisoners and the guards attempting to rescue their colleagues.

Immigration detention facilities do not always keep female detainees separate from the male population.

Minor children are held in separate detention facilities. According to a December 2000 MINUGUA report, there are only five juvenile delinquent facilities in the country; approximately 39 percent of the children housed in these facilities have sought protection and have committed no offense.

Law enforcement authorities and justice sector workers continued to work without a current Minors' Code. The version of the Minors' Code proposed by the FRG-led Congress has yet to supplant the outdated 1979 Code presently in force. In May the Supreme Court presented to the Guatemalan Forum a project to modernize the juvenile justice system. The project is intended to streamline legal cases involving minors and train judges about the human rights of children.

The vast majority of juveniles detained by authorities are between 16 and 18 years old; 84 percent are boys. The Secretariat for Social Welfare runs four Centers for the Treatment and Orientation of Minors: one for girls and three for boys. The Centers do not separate delinquent children from children who are victims. Officials do not separate adequately those who have been convicted and are serving a sentence from pretrial detainees; those who are serving time for minor infractions are often held with those who have committed serious offenses. Adequate sanitation, hygiene, and nutrition are persistent problems within the underfunded system. On January 28, inmates at the juvenile detention center in the capital's downtown area wounded a guard, burned mattresses, and destroyed doors, windows, and bathrooms. Six adolescents escaped but were recaptured quickly in the confusion. The adolescents complained of mistreatment and insufficient food.

The Government permits prison visits by independent human rights monitors, public defenders, and religious groups.

d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest and detention; however, there were frequent credible reports of arrests without judicial warrants, illegal detentions, and failure to adhere to prescribed time limits in legal proceedings. In practice, arresting officers frequently fail to satisfy legal requisites. The Constitution requires that a court-issued arrest warrant be presented to a suspect prior to arrest unless he is caught in the act of committing a crime. Police may not detain a suspect for over 6 hours without bringing the case before a judge. Once a suspect has been arraigned, the prosecutor generally has 3 months to complete his investigation and file the case in court, or seek a formal extension of the detention period. The law also provides for access to lawyers and bail. During June and August, the State of Alarm suspended these constitutionally established freedoms.

There is no comprehensive, reliable data on the number of arbitrary detentions, although most accounts agree

that security forces routinely ignored writs of habeas corpus in cases of illegal detention. The PDH recorded 53 cases of illegal or arbitrary detention by the PNC. In its 12th report, MINUGUA investigated 110 cases of illegal or arbitrary detention, and confirmed 88 of them. These figures again reflected an increase over the previous reporting cycle. From October 1999 through June 2000, MINUGUA investigated some 31 cases of illegal or arbitrary detention, and confirmed 23 cases.

A study of the due process of minors in detention found that 95 percent of arrests of minors are without a warrant. Of these cases, 87 percent never go to trial. When the court system analyzed arrest warrants for juveniles it found such reasons as having tattoos or scandalous behavior in public.

According to a registry maintained by the prison system, during the year, there were a total of 8,608 prisoners throughout the country; 7,303 had been accused of committing common crimes, and of those, 3,014 had been sentenced, leaving 4,289 awaiting trial. The law sets a limit of 3 months for pretrial detention; however, longer detentions still occurred routinely. Prisoners often were detained past their legal trial or release dates, sometimes for years. Prisoners were not released in a timely fashion after completing their full sentences due to the failure of judges to issue the necessary court order or other bureaucratic problems.

The Constitution prohibits exile, and it is not practiced as a matter of policy. However, self-exile is a very common response by citizens who feel threatened or intimidated.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, the judicial system often fails to provide fair trials due to inefficiency, corruption, insufficient personnel and funds, and intimidation of judges, prosecutors, and witnesses. The courts' response to human rights violations, as well as to general criminal activity, has been inadequate, although during the year the Government achieved convictions in a few important human rights cases from previous years (see Section 1.a.). However, many high-profile human rights cases remained pending in the courts for long periods as defense attorneys employed numerous dilatory appeals and motions. Courts sometimes took months to resolve even patently frivolous appeals. There were numerous credible allegations of corruption, manipulation, and intimidation in the judiciary. There also were credible allegations of parallel investigations by military intelligence—in the Bishop Gerardi and Ordonez Porta murder cases—that interfered with the justice system's efforts to investigate or prosecute those responsible (see Section 1.a.). Intimidation of witnesses continued to be a problem; there were credible reports of the killing and threatening of witnesses (see Sections 1.a. and 1.c.).

Judges and prosecutors continued to receive threats whose purpose was to influence pending decisions or to seek reprisal for past decisions. Death threats and intimidation of the judiciary were common in cases involving human rights violations, particularly when the defendants were active or former members of the military, military commissioners, or former members of Civil Defense Patrols. Witnesses are often too intimidated to testify. With relatively few exceptions, plaintiffs, witnesses, prosecutors, and jurists involved in high-profile cases against members of the military reported threats, intimidation, and surveillance. For example, the lead prosecutor and his staff in the Bishop Gerardi murder investigation reported wiretapping, surveillance, and frequent death threats. In addition, at least three judges and one judicial staff member in the Gerardi case reported threats and intimidation, including surveillance (see Section 1.a.). A March 2000 report at the U.N. Human Rights Commission noted that many judges and prosecutors are denied health insurance because the threats and intimidation that they receive make their jobs too dangerous. The Government allocated more resources to the judiciary's physical security, including providing protective details for the judge and at least some members of the prosecution team in the Gerardi case and witnesses in the SITRABI and Dos Erres cases (see Sections 1.a. and 6.a.). The Supreme Court hired a team of bodyguards (see Section 1.a.). The Government also devoted more resources to providing for witness protection abroad for key witnesses in the Gerardi and Dos Erres cases (see Section 1.a.). During the year, the Public Ministry spent approximately \$275,000 (2.5 million quetzals) on its witness protection program. In May the Prosecutor's Office appointed a special prosecutor, Leopoldo Liu, to investigate killings of and threats against lawyers, judges, and prosecutors. By mid-year, Liu had 55 cases in his caseload (see Sections 1.a. and 1.c.). However, the unit, lacks the personnel and resources necessary to carry out its mission.

On March 23, at least seven shots were fired at the house of Conchita Mazariegos, President of the Constitutional Court, who was not at home at the time. The Court was hearing the so-called Guategate case brought against more than 20 members of Congress who allegedly altered a law after it was voted on but before it was published (see Section 3). Several months after the event, neither the Prosecutor's Office nor the Investigative Unit had interviewed key witnesses to the event.

On June 14, and again on September 18, a military helicopter circled over the house of Judge Yassmin Barrios at a very low altitude. The police detail guarding the house reported that the helicopter did not belong to the

Interior Ministry, which oversees the police, but to the military. Army officials dismissed the first event as coincidence. The first incident occurred a week after the three-judge court, to which Judge Barrios belongs, convicted three members of the military of murdering Bishop Juan Gerardi (See Section 1.a.). The Judge also recently had dissented from her colleagues on the Third Court when they decided to delay on procedural grounds the trial of military personnel for the murder of Myrna Mack (See Section 1.a.). On March 21, 2 days before the start of the Gerardi trial, a grenade was thrown at her home and as a result she was put under 24-hour police protection. The presence of military helicopters is the first apparent linkage of the military to acts of intimidation.

On May 10, the three-judge tribunal hearing the Gerardi case met with the U. N. Special Rapporteur on the Independence of Judges and Attorneys, Param Cumaraswamy. In a follow up report to the Special Rapporteur, the Mack Foundation noted that by the year's end, 80 cases of threats to justice workers had been reported, approximately half of which were associated with the Gerardi trial.

In January the Archbishop's Human Rights Office named as a witness in the Bishop Gerardi murder trial retired Peruvian General Rodolfo Robles Espinoza. In February his Guatemalan employer received an anonymous death threat that clearly was intended to dissuade him from testifying. On April 18, General Robles testified on the impact of the REMHI report on the Guatemalan Army and on the persistence within the military of a vision of national security capable of producing a political-military crime like that typified by the murder of Gerardi. On April 20, Guatemalan Ambassador to Peru and retired Colonel Carlos Armando Moreira Lopez wrote to the General Commandant of the Peruvian Army. He suggested that General Robles had "constituted himself as a public accuser against the Guatemalan Army" and requested "all information about his political and social leanings and his links to international organizations and other such self-proclaimed human rights defenders." Once the incident became public, Foreign Minister Gabriel Orellana called for Moreira Lopez to step down. On June 23, the media reported that he had acted without consultation with the Foreign Ministry.

There were several unsuccessful attempts to lynch local judicial officials (see Section 1.a.).

The judiciary is composed of the Supreme Court, appellate courts, trial courts, and Probable Cause Judges (which function like grand juries). There also are courts of special jurisdiction such as labor courts and family courts; these also are under the jurisdiction of the Supreme Court. The Constitutional Court is independent of the rest of the judiciary. There are several community courts in indigenous rural areas.

The Constitution requires that Congress elect all Supreme Court and appellate court magistrates every 5 years from lists prepared by panels composed of active magistrates, representatives of the bar association, law school deans, and university rectors. In April a new Constitutional Court was selected in a highly transparent process closely scrutinized by the press and judicial watchdog groups. Some groups criticized individual judges elected to the Constitutional Court; however, most saw the selection process itself as transparent. During the year, 18 judges whose 5-year contracts were not renewed collectively filed a petition before the Constitutional Court. In May the Constitutional Court determined that the Supreme Court had acted improperly in not renewing the judges' contracts. Instead, the Constitutional Court argued, the Supreme Court must convene the Judicial Careers Council to determine whether there was cause to not renew their contracts.

The 1994 Criminal Procedures Code provides for the presumption of innocence, the right to be present at trial, the right to counsel, plea bargaining, and the possibility of release on bail. Trials are public, allowing victims, family members, and human rights groups to observe the process. Verdicts are rendered by three-judge panels. The Criminal Procedures Code introduced oral trials; however, only those attorneys who have graduated since that time have had real training in oral trials. During the year, an innovative pilot project was initiated in the municipalities of Zacapa and Quetzaltenango to present pretrial motions orally, rather than in writing. The code also provides for language interpretation for those who require it; however, in practice this provision rarely is honored due to budgetary and other constraints (see Section 5). During the year, 20 new interpreters were hired, bringing the total to 67, and the Public Defender's Office began hiring attorneys who speak indigenous languages and assigning them to areas where they can use their language skills to defend non-Spanish-speaking defendants. The Prosecutor's Office, which is independent of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as co-plaintiffs. Lengthy investigations and frequent procedural motions by both defense and prosecution often lead to excessively long pretrial detention (see Section 1.d.). Courts showed little willingness to exercise discretion in dismissing frivolous or patently invalid motions. As a consequence, parties continued to use such motions as delaying tactics, frequently holding up trials for several months or even years.

Inefficiency and corruption in the courts, Public Ministry, and police continued to impede the proper functioning of the judicial system and undermine the right to due process. The Supreme Court continued to seek the suspension of judges and to conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. The Discipline Unit investigated 503 cases of wrongdoing during the year. As a result of those

investigations, 14 judges were sanctioned, 32 were suspended, and 4 were sanctioned with the recommendation that they be removed. Of those sanctions against judges, 1,159 were findings of impropriety, 66 were warnings, 9 judges were fired, and 1 was suspended. Magistrates received 13 findings of impropriety. The Public Ministry has been hampered in its efforts to investigate crimes and prosecute offenders by inadequate training and equipment, excessive caseloads, and insufficient numbers of investigators. In November the Myrna Mack Foundation reported that 59 percent of the attorneys and law students who participated in a questionnaire regarding corruption in the justice system rated the system very corrupt. The report further details the ease in which payments can be made to justice workers to postpone trials, expedite motions, alter evidence or issue rulings in a predetermined manner. Prosecutors remained susceptible to intimidation and corruption. In addition, the Government's failure to delineate clearly responsibility for investigating crimes to either the PNC or the Public Ministry led to continued infighting and competition between these organizations, as well as the duplication of investigative resources. It was difficult to attract qualified personnel to the courts because of the low salaries offered, but a raise in the salaries of judges attracted greater numbers of higher caliber candidates.

The 1999 Law on Judicial Careers established a system to regulate the income, terms of office, promotion, training, disciplinary measures, and other activities of judges and magistrates. It provided for a mandatory 6-month training course for all newly appointed judges. The panel reviewed numerous cases and issued sanctions ranging from letters of reprimand to firing. On May 5, the Constitutional Court overturned the June 12, 2000, decision by the Supreme Court not to renew the contracts of 18 judges. The Constitutional Court found that the judges' due process rights had been violated when the Supreme Court failed to convene the Judicial Career Council as established by the Law on Judicial Careers. The Council is responsible for selecting judges as well as disciplining them in accordance with the law's criteria for sanctions. In September, after the Disciplinary Unit reviewed complaints filed against forensic doctors, the Supreme Court dismissed four of them. The decisions were based on the doctors' failure to maintain professional standards, including the timely submission of autopsy reports. In September the Disciplinary Unit also called for the dismissal of four justices of the Peace.

In June and July, the Disciplinary Unit investigated Judge Delmy Rocio Castaneda Gonzalez, reportedly after an appeals court notified court authorities in late May of a pattern of questionable decisions that forced the appellate court to reverse the majority. The review revealed patterns of flagrant leniency and bias in scores of cases involving drug and other contraband traffickers. The gravity of the case caused the Supreme Court to assign a judge to work with the Prosecutor's Office in the legal process of stripping her of her immunity from prosecution. As the legal case proceeded, the Supreme Court suspended her from her duties, and on July 12, the Constitutional Court upheld that decision.

Also in July, the General Supervisor of Tribunals (SGT) investigated the role of justices Sandino Antulio Avelar, Byron Estuardo Roca Gomez, and Miguel Angel Villatoro Schunimann in their presumed role in the transfer of prisoners responsible for orchestrating the June 17 jail break from the maximum security prison in Escuintla (see Section 1.c.). On July 4, the Judicial Disciplinary Unit suspended Sandino Antulio Avelar and Byron Estuardo Roca Gomez. In July the authorities also suspended Jose Otto Eduardo Sierra Rodas, justice of the peace in the Port San Jose, and Rony Ernesto Silvestre Ramirez, another justice of the peace from Santa Cruz Barillas, Huehuetenango.

In a separate case, the SGT reviewed complaints against Judge Marco Antonio Posadas in conjunction with his investigation of the bank fraud that bankrupted the twin Metropolitan and Promoter Banks belonging to the President's campaign financier, Francisco Alvarado MacDonald. There were credible allegations that Alvarado MacDonald used his financial and political power to influence the handling of the case. In addition to investigating judges and justices, the Disciplinary Unit also oversaw the investigation of court employees who inexplicably lost the court proceedings in another high profile bank fraud case pending against the former president of the National Mortgage Credit Bank, Jose Armando Llort.

In cooperation with foreign donors, the Government continued its efforts to reform the judicial system, and there were some significant improvements throughout the year. One of the most successful reform efforts has been the creation of justice centers, which bring together judges, public defenders, prosecutors, private law practitioners, police, municipal representatives, military officers, and civil society in a team approach to dispute resolution and problem solving. The centers have installed modernized docket and case filing systems in the courts, thereby increasing efficiency and public service while significantly decreasing corruption in the disappearance of case files. Justice centers operated in 10 locations around the country.

In 1999 the Supreme Court extended the administrative model of the justice centers to include the criminal courts in the capital by creating a new Clerk of Court office, which has streamlined the processing of cases, increased transparency, and improved customer service. Under the old system, courthouses resembled marketplaces in which individuals could bribe a court official to "lose" their case file--a system that resulted in near-complete impunity for those with sufficient money. Individuals also could bribe the court to lose the file of

a person in pretrial detention, thus assuring that that person would remain in jail indefinitely. The number of missing cases has dropped from approximately 1,000 per year to 1 case in 2001. An analogous system was inaugurated in Guatemala City in the Prosecutor's Office Case Intake Unit. The intake system reduced the average waiting time for filing a complaint from several hours to approximately 10 minutes. In July a new Prosecutor's Office Victim's Unit also was inaugurated in the capital, with doctors and nurses on call 24 hours a day to assist rape and other crime victims and to gather evidence for their cases (see Section 5). Over the course of the year, these units along with the justice centers were extended to every department in the country. Since 1994 the Government has expanded the judiciary's presence throughout the country; at year's end, there were judges in all of the 331 municipalities around the country.

A raise in the salaries of judges attracted greater numbers of high caliber candidates. During the year, the judicial sector initiated an internship program with law students from the national university. The program is designed to provide training to students and much needed practical support to the courts, prosecutors, and public defender's offices.

Despite some progress, much remains to be done to reform the judiciary and establish effective rule of law, as mandated by the Peace Accords. Many of the structural and procedural weaknesses of the judiciary would have been addressed by the proposed constitutional reforms that were defeated in a national referendum in May 1999. The National Commission for the Strengthening of Justice, which was created following the Peace Accords, increasingly is active; in July 2000, it announced its strategic plan, and subsequently created a number of subcommittees to work on implementation. The Commission met weekly during the year to discuss and define the role of justices of the peace, discuss reforms to the penal code and strategize on how to reduce duplication of work in the criminal labs run by the police, the Public Ministry and the Department of Justice.

The Prosecutor's Office has been hampered in its efforts to investigate crimes and prosecute offenders by inadequate training and equipment, excessive caseloads, and insufficient numbers of investigators. For example, in a sentencing court ordered the release of four homicide suspects--Luis Alberto Sinay Rodas, Miguel Angel Gonzalez Morales, Jose Alfredo Foronda Morales and Joel Gustavo Lopez Huertas--because the prosecutor of their case, Yolanda Gomez Vasquez, failed to submit court documents in a timely fashion in accordance with the Penal Code. Prosecutors remained susceptible to intimidation and corruption. In addition, the Government's failure to delineate clearly responsibility for investigating crimes to either the police or the Prosecutor's Office led to continued infighting and competition between these organizations, as well as the duplication of investigative resources.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution provides for the inviolability of home, correspondence, and private documents; however, allegations persist that the authorities sometimes disregard these provisions. Elements of the security forces, specifically the EMP, reportedly continued to monitor private communications. The prosecutor and his staff in the Bishop Gerardi murder investigation continued to report wiretapping and surveillance, and other human rights organizations reported telephone anomalies that suggested wiretapping (see Section 1.a.). In February the Prosecutor's Office formally charged Colonel Juan Valencia Osorio of spying. Valencia Osorio served as director of security of the EMP, and is alleged to have directed an office that reviewed the contents of correspondence. Valencia is also a suspect in the murder case of Myrna Mack (see Section 1.a.).

A former military specialist, Oscar Chex Lope, testified that for at least 6 years, military intelligence spied on Bishop Gerardi. He claimed that anyone considered part of the opposition to the Government or to the army--including politicians, unionists, or religious workers--was subject to wiretaps and was spied on. Under oath he described the practice of keeping active files on religious, indigenous, union, and political leaders.

In May 2000, Edgar Gutierrez, head of the President's Secretariat for Strategic Analysis, announced the existence of a computer database containing names, personal information, and cryptic codes about more than 650,000 persons. The database appeared to have been compiled by military intelligence several years earlier, and a copy remained on the SAE computer system. The SAE provided a copy to the Human Rights Ombudsman, who offered access to the database as a public service for those who wished to learn if their names appeared on the list.

The military continued to honor the 1994 presidential order to suspend all conscription, including forced recruitment, as the armed forces found it relatively easy to recruit young male volunteers from impoverished areas using pay and education incentives.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of expression, and the Government generally respected this right in practice; however, there were numerous credible reports that members of the press were targets of anonymous threats and intimidation, and there were credible allegations of government-connected censorship. Self-censorship was common and took the form of individual decisions not to speak out or testify.

In addition to regular and open criticism of government policies, the print media publicized communiques from human rights organizations, unions, and groups opposed to the Government or its policies. The press criticized the military and other powerful sectors. The press also regularly published stories on reputed drug traffickers, official corruption, and clandestine intelligence networks. There are seven major dailies published in the capital and approximately six local papers published outside the city.

The Government prepared public information programs, which the radio and television stations were required to broadcast. The Government owns the rights to two national (VHF) television channels but neither channel now broadcasts. During the year, the Government announced plans to auction the broadcast licenses for the channels, but no auction had occurred by year's end.

Despite its Peace Accords pledge to enact reforms to the Radio Communications Law to make radio frequencies available for indigenous communities, the Government instead passed a law that created a public auction system for radio frequencies. In August 2000, when eight local radio operators were unable to purchase the frequencies that they already were using due to the extremely high cost, the Superintendent of Telecommunications fined them \$10,000 (about 78,000 quetzals) for broadcasting without a license. MINUGUA concluded that the high cost of the public auction system was an effective barrier to rural indigenous access to radio frequencies. At year's end, the Government and the Guatemalan Council on Community Mediums of Communication, a NGO, were negotiating proposed reforms to the law.

All four of the country's national television stations are owned by a Mexican citizen, Angel Gonzalez, who plays a significant role in politics and provides free broadcast time to FRG politicians whom he supports. These channels were criticized strongly as being monopolistic, progovernment, and interested in broadcasting only uncontroversial news. In exchange for giving extensive free time to the FRG and denying access to then-ruling National Advancement Party, Gonzalez reportedly insisted that his brother-in-law, Luis Rabbe, be the FRG's candidate for mayor of Guatemala City. Despite the FRG's electoral sweep of most major offices, Rabbe was defeated. The President then named Rabbe as his Minister of Communications. Both Rabbe and the Communications Ministry were the subject of numerous corruption charges.

In April 2000, the Organization for American States (OAS) Special Rapporteur on the Freedom of Expression Santiago Canton visited the country. He recommended a "serious investigation of the possible existence of a real monopoly on television stations open to public access," in reference to the control by a single individual of all of the private stations in the country. He also recommended that the Government implement clear regulations to prevent conflicts of interest between government officials and the media and suspend the auctions on radio frequencies until the Peace Accord regarding the rights of indigenous people is implemented.

In January Claudia Mendez Villasenor, print journalist for the daily *El Periodico*, claimed to be the target of pressure from two former consultants to Luis Rabbe. The daily ran a series on corruption and influence peddling by Rabbe. On February 20, an estimated 60 persons demonstrated in front of the offices of the newspaper and blocked the door to the offices. In its analysis of the event, MINUGUA reported that the crowd consisted of employees of the Ministry of Communications who went to the scene in Ministry vehicles. On March 27, Sylvia Gereda, coDirector of *El Periodico* was followed and threatened after publishing accounts of corruption in the operations of the Banco Credito Hipotecario Nacional, and particularly on the part of the former bank president. On March 30, two masked gunmen followed Martin Juarez, another *El Periodico* journalist, for 2 hours and then threatened him. The gunmen reportedly stated that *El Periodico* should cease to publish articles critical of the Government. In July Jose Ruben Escalante, director of the radio program *Agenda 2000*, reportedly received numerous threats of violence by telephone after addressing the controversial theme of tax increases.

On June 13, the President removed Luis Rabbe as Minister of Communications, following many allegations of mismanagement and fraud. On June 3, print journalists filed a complaint before the IACHR against the Gonzalez television monopoly and alleged government efforts to restrict press freedom. In an interview published on June 4, Salvador Bonini, president of the Guatemalan Journalists Association, characterized the situation of the media as "not so much a conflict as a direct attack by television on the independent written press."

On September 5, the President promised delegates from the Inter-American Press Society (IAPS) that the Government would auction off the frequencies of two national television channels, thereby ending the monopoly control of Angel Gonzalez. Both IAPS delegates and deputies from opposition parties in the Congress voiced concern that any auction be transparent. One journalist noted that in 2000 a publisher of a newspaper that was often critical of the Government made an offer to buy the educational television station; however, the Government refused to sell the license to him. The channels belong to the Defense and Education Ministries; however, neither ministry has the equipment or personnel needed to use the channels. Broadcasting laws must be changed before the channels can be sold because the law reserves those channels for government use.

From March to August the Government negotiated a settlement with the IAPS and with survivors of Irma Flaquer who, before she was kidnaped in 1980, published a column entitled "What Others Conceal" that was critical of the atrocities committed during the conflict. A settlement included reparations to her survivors of \$232,260 (1.8 million quetzals), a memorial mass for Flaquer in the national cathedral, and the naming of a section of a street in downtown Guatemala City after Flaquer. As stipulated in the settlement, in December the Public Ministry designated a special prosecutor to reopen and investigate the case.

Death threats against journalists and other citizens critical of corruption were reported widely throughout the country. On June 8, the Prosecutor's Office created a special prosecutor for the protection of journalists and unionists.

On September 6, several armed men shot and killed Jorge Maynor Alegria Almendaris, host of Direct Line, a call-in program on Radio Amatique, outside his home in Puerto Barrios, Izabal. Reports suggested that the murder was linked to Alegria's having accused officials and port authorities at Puerto Santo Tomas of embezzlement, bribery, and other abuses. Police units from the capital and Puerto Barrios investigated the murder and quickly detained two suspects, Eddy Ramon Garcia Silva and Humberto Estuardo Contreras Salazar. However, the men were released in October after a witness failed to recognize them in a line-up, and it was determined that the weapon the detainees were carrying did not match the murder weapon. The Human Rights Ombudsman criticized the arrest as an attempt to find a scapegoat and cover up the real authors of the crime, and implicated the mayor of Puerto Barrios, of whom Alegria was especially critical. The representative of the PDH in Izabal, Waldemar Barrera, characterized Martinez's death as an extrajudicial killing, cited anomalies in the investigation carried out by the PNC, and reported that both he and the key witness had received death threats. At least two programs at Radio Amatique were taken off the air after the event.

On February 13, the trial of Gustavo Adolfo Garcia Rosales and Luis Fernando Ramirez Perez, charged with the April 2000 killing of photojournalist Roberto Martinez and two other persons began. Garcia received an 18-year prison sentence for homicide and carrying a weapon without permit, but Ramirez was absolved. Martinez's family immediately filed an appeal, but the sentence was upheld in November.

On September 5, the Archbishop's Human Rights Office filed a motion against the Interior Minister for the August appointment of Carlos Rafael Soto as Director of the National Printing Office on the grounds that the law prevents the appointment to public office of someone against whom charges are pending. Since 1999 Soto has been under investigation by prosecutors for the alleged repeated sexual abuse of two girls, ages 9 and 11. Separately, Congressional deputies Anabella de Leon and Magda Arceo, and the previous director of the printing office, Sylvia Mendez, filed their own motion against Soto and Vice President Francisco Reyes Lopez on charges of abuse of authority. The accusations are in connection with alleged involvement in a government-directed smear campaign against Jorge Briz, the former head of the Guatemalan Chamber of Commerce. As a result of the ensuing investigation, the women claimed to have received numerous death threats and Arceo and Mendez went into exile. In December the IACHR ordered the Government to provide them with protection.

In September representatives of the Guatemalan press delivered a report to the IACHR detailing various cases of threats and harassment against journalists. The group asked the IACHR to investigate these crimes, including the deaths of Roberto Martinez and Mynor Alegria, and make recommendations to the Government to protect freedom of speech.

In June the Center for the Defense of Freedom of Expression (CEDEX), a local press freedom NGO, conducted a seminar at which it encouraged journalists from all over the country to report attacks on the press in their areas.

On November 30, Congress passed a bill that would require every working journalist to hold a journalism degree, belong to a professional association, and receive a government license. Despite overwhelming popular criticism, the Executive signed the bill into law on December 21; however, an immediate challenge was filed asking the Supreme Court to overturn it as conflicting with the Constitution's provision on freedom of expression.

A Government-sponsored Freedom of Information Law which would establish an ombudsman's office to defend the right to freedom of information, including the ability to petition the Government for personal records and other information, languished in the FRG-dominated Congress at year's end.

Academic freedom is respected.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of peaceful assembly, and the Government generally respects this right in practice. Peaceful demonstrations were common. There were a variety of protests around the country to demonstrate opposition to a variety of situations: Corruption on the part of local officials; mismanaged banks and social funds; budget cuts in education; and dislocation of squatters and street vendors. Demonstrations were undertaken by: Coffee plantation workers calling for government assistance, fishermen denied beach access, indigenous communities dissatisfied with police and juridical services, high school students opposed to the national literacy campaign because they were being forced unwillingly to conduct after hours reading classes for adults with very little preparation and materials, and families of persons who disappeared during the conflict.

On April 24, the President of Congress and FRG Party head retired General Efraín Ríos Montt was called to appear before a judge regarding his involvement in the alteration of a law after it was voted on in the Congress. The Citizens Movement for Justice and Democracy called for a demonstration at the courthouse. While in front of the building, about 50 antigovernment protesters were surrounded by about 1,500 FRG supporters who were bussed to the site. The FRG supporters allegedly surrounded and beat the activists, destroyed their banners, and cut the cables of their sound system. Despite the large crowds, there was virtually no police presence or crowd control. The police did not respond when called by telephone.

Protests against increases to the value-added tax began in June with Friday evening rallies in the capital by primarily upper-middle class protesters wearing black. By late July and early August, thousands of schools closed and large protests were held across the country in conjunction with a nationwide business shutdown called by the private sector on August 1 (see Section 6.a.). The protests were mostly peaceful; however, police arrested some 200 protesters for minor offenses such as property damage. Vehicles stopped traffic on the highway to Escuintla. Protesters from the national university held hunger strikes in front of the Constitutional Court, and protesters in various cities burned tires in the streets. There were credible allegations of police brutality during the afternoon of the August 1 demonstrations against tax increases, and legal proceedings were initiated against 15 police officers (see Section 1.c.).

In Totonicapán, protesters became violent, breaking windows and setting fire to the residences of local FRG members of Congress. In response, the President and his cabinet declared a state of exception in Totonicapán in the early morning hours on August 2. The army was sent to Totonicapán, and certain constitutional freedoms were suspended in principle to give the army the capacity to impose a curfew, confiscate arms, centrally control information, prohibit or control meetings, disband any organization, detain any suspect, and otherwise repel any action which ran contrary to their orders. However, the lack of a legal quorum in Congress raised the question whether the ruling FRG party would be able to approve the President's decree. The legal point soon became moot as violence subsided and the army was withdrawn from the city on August 5.

The Constitution provides for freedom of association, and it was generally respected in practice; however, there were credible allegations that the Government interfered with political associations. The opposition credibly claimed that the Government printing office distributed thousands of leaflets slandering the then head of the Chamber of Commerce in retaliation for that organization's role in fomenting public protests against tax increases.

On February 21, several days before retired General Otto Pérez Molina was to announce the formation of a new political party, masked gunmen shot and wounded the General's daughter, Lisette Pérez Leal de Solorzano (see Section 1.a.).

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respects this right in practice; however, the Government has not implemented the 1995 Agreement on the Identity and Rights of Indigenous People, which provides for the respect of spiritual rights of indigenous people. There is no state religion; however, the Constitution recognizes explicitly the separate legal personality of the Catholic Church. The Government does not subsidize religious groups directly. Members of a religion need not register simply in order to worship together. However, the Government requires religious congregations (other than the Catholic

Church), as well as other nonreligious associations and NGO's, to register as legal entities to be able to transact business.

While there is no government policy of discrimination, a lack of resources and political will to enforce existing laws and to implement the Peace Accords limits the free expression of indigenous religious practice. Indigenous leaders note that Maya culture does not receive the official recognition that it is due. The Government has not provided mechanisms for free access to ceremonial sites considered sacred within indigenous culture, nor has the Government provided for the preservation or protection of such ceremonial sites as archaeological preserves. The Government's use of sacred sites as revenue-generating tourist destinations is considered by some indigenous groups to be an affront to their spiritual rights.

On June 8, a court convicted three military officers of the 1998 murder of Bishop Juan Gerardi, the Coordinator of the Archbishop's Office on Human Rights (see Section 1.a.).

Prosecutors appear to have dropped the case of Mayan priest Raul Coc Choc who was shot and killed at his home in the department of Chimaltenango. Coc Choc was a leader of the National Association of Mayan Priests; members of the board reported that he had received numerous death threats.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, however during the year the Government temporarily suspended in principle the right of freedom of movement within the country. In reaction to a jail break in June in which 78 criminals escaped from the maximum-security prison in Escuintla, the Government established a state of alarm (see Section 1.c.). Four rights normally protected by the Constitution were suspended from June 18 to August 18 as extensive manhunts were conducted in the south of the country: freedom of movement, freedom from arbitrary arrest, freedom from search and seizure, and freedom from interrogation without the presence of a legal representative (see Section 1.d.). In August the President briefly declared a state of exception in Totonicapan (see Section 2.d.). The Government generally respected these rights during the rest of the year.

The former Director General of Immigration acknowledged publicly that persons attempting to cross illegally into the country are subject to extortion and mistreatment by government officials. Many observers believe that this mistreatment is underreported because illegal immigrants almost never have the capacity to lodge formal complaints, either with the authorities or against them, and there is little legal assistance available to such immigrants. In December an Indian national committed suicide as a result of the conditions at the center for detained illegal migrants and out of frustration at the prospect of never reaching his intended destination, the United States.

The Government grants refugee status and asylum in accordance with the provisions of the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperates with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees from other countries. The issue of the provision of first asylum did not arise. There were no reports of the forced return of persons to countries where they feared persecution.

Voluntary repatriation of Guatemalan refugees who had migrated to Mexico during the internal conflict concluded in 1999, bringing the total to over 40,000 since 1993. Guatemalans who still remain in Mexico do so by choice. Forty former refugee families returned voluntarily to Mexico in August 2000, claiming that the Government was not providing for their fundamental needs. The Government of Mexico reportedly accepted their return. Over 1,500 other individuals indicated their intention to return to Mexico if the Government would not resolve their land issues and improve living conditions.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage for those 18 years of age and older. Ballots are secret. Members of the armed forces and police may not vote. Since the return to democracy and civilian rule in 1985, there have been nine free elections. International observers concluded that both the November 1999 general elections and the December 1999 runoff presidential election were generally free and fair. Lack of transport, onerous voter registration requirements, and elections scheduled during the harvest season prevent many poor, indigenous, and rural persons from voting. A significant percentage of the rural poor population lacks the documentation needed to register to vote. Several campaigns exist to document citizens, particularly among the illiterate.

Voters elect the 113-member, unicameral Congress every 4 years using a system of proportional

representation based on population, with deputies elected both from districts and from a nationwide list. Voter participation in the 1999 elections was at a 13-year high. Four parties and both coalitions won seats in the legislature, led by the FRG with a 63-seat majority, followed by the PAN with 21 seats, the Bancada Unionista with 16 seats, and the New Nation Alliance coalition, which includes the Guatemalan National Revolutionary Unity (URNG) party, with 9 seats. Other small parties hold a total of 4 seats. Congress can and does act independently of the executive, but fragmentation along party lines and a weak support and staff structure result in a legislature that is relatively ineffective. However, Congress increased its relative power and independence under the leadership of FRG President of Congress and retired General Efraín Ríos Montt, a former de facto President.

The former Guatemalan National Revolutionary Unity guerrillas met all legal requirements for qualification as a political party and competed in the 1999 general elections and won nine seats in Congress as part of a coalition with a much smaller party.

In December 1999, voters elected FRG presidential candidate Alfonso Portillo in a runoff election that international observers characterized as free and fair. He took office in January 2000.

The Government's efforts to implement the Peace Accords during the year were mixed. Payment of compensation to family members of the victims of the Dos Erres massacre, raising government revenues as outlined in the fiscal pact, and increasing the number of police were some of the major advances in implementation (see Sections 1.a. and 1.c.). However, significant increases to the defense budget, the naming of retired and active duty military officers to senior positions in the Ministry of Government, and the failure to dismantle the EMP were criticized broadly by civil society and the international community as troubling failures.

In 1999 in a national referendum, voters rejected the entire package of 50 constitutional reforms approved by Congress in 1998, dealing a significant blow to the peace process. Only 20 percent of the electorate voted. The defeated amendments included provisions to recognize, respect, and protect indigenous languages and traditional customs, professionalize the judicial service, give civilian courts jurisdiction over military personnel, and define the army as an apolitical organization. While ordinary laws could be enacted to accomplish many of the reforms, the constitutional reforms nonetheless held great symbolic value for the peace process.

There are no legal restrictions, and few practical ones, on the participation of women in the political process; however, the percentage of women in government and politics does not correspond to their percentage of the population. The major parties nominated and elected fewer female candidates for Congress in the 1999 elections; however, women's participation as voters was the highest ever, despite social traditions that inhibit voting by women. Women held some prominent political positions. Voters elected 8 women to Congress in 1999, and that number was increased to 12 as substitutes took the seats of members of Congress recruited to serve in the Executive Branch. One woman, Zury Ríos de López, is the Second Vice President of Congress. Women hold two seats on the Supreme Court and one on the Constitutional Court. There was one female minister in the Cabinet—the Minister for Culture and Sports. In March MINUGUA reported that only 69 percent of women of voting age were registered to vote; of this group only 33 percent voted. Less than 1 percent of the 330 mayors in the country were women, and less than 5 percent of the municipal officials.

The Constitution provides for equal rights for indigenous people. Some attained high positions as judges and government officials, including 14 members of the Congress. Indigenous people still are underrepresented significantly in politics due to limited educational opportunity and pervasive discrimination (see Section 5). There are two indigenous members in the Cabinet. While indigenous people represent 60 percent of the population, they represent only 1 of 12 ministers and 1 of 12 presidential secretaries. Of 113 members of Congress, 14 are indigenous. There were two indigenous ambassadors. In September a number of prominent Mayan women, including Rigoberta Menchú and Otilia Lux Cotí, created the Political Association of Mayan Women (MOLOJ) to promote the political participation of Mayan women, especially in the highlands.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The Government permits local human rights groups to operate without restriction, and numerous domestic and international groups investigate and report freely on human rights issues; however, during the year, most NGO's credibly reported receiving threats or being intimidated by unidentified persons. Senior government officials met with numerous foreign government officials and international human rights monitors. While many international human rights organizations and their workers do not enjoy formal legal status, they continue to operate openly.

There continued to be a high number of threats against human rights workers, as well as journalists and judicial personnel (see Sections 1.a., 1.c., 1.e., and 2.a.). Most of these acts of intimidation involved

anonymous telephonic threats, surveillance, and unknown individuals and cars following human rights workers or watching their workplaces or residences. The Archbishop's Human Rights Office personnel reported frequent and persistent death threats, surveillance, and other acts of intimidation, as did the prosecutors, two judges, and other judicial personnel working on the Bishop Gerardi murder case (see Section 1.a.). Legal staff associated with the genocide case against former de facto president and retired General Efraín Ríos Montt similarly were threatened or attacked.

On July 22, Anselmo Roldan Aguilar, president of the Association for Justice and Reconciliation (AJR), was the victim of a knife attack. The aggressor previously had threatened Roldan as well as other members of the AJR, which represents communities where massacres occurred during the presidencies of Lucas García and Ríos Montt. Members of the AJR are party to the genocide cases pending against both men (see Section 1.a.).

On March 6, two attorneys involved in the Movement for Justice, Alejandro Sánchez and Juan Pablo Arce, were threatened over the telephone and told that they had 48 hours to leave the country. The Center for Studies, Information and Databases for Social Action was subject to five robberies in 15 months. On March 12, computers were stolen from the office. The Prosecutor's Office and police investigations were virtually nonexistent, despite the pattern of assaults.

On April 2, the offices of Casa Alianza in Guatemala City were broken into and ransacked. Several hundred files containing personal information about street children with whom Casa Alianza works were strewn all over the floor. After cleaning up, Casa Alianza determined that 12 active files were missing.

In April there were credible reports of a break-in and theft of a computer from the home of a human rights activist involved with the case of the disappearance of guerrilla leader Efraín Bamaca Velásquez, as well as renewed death threats against one of the case's key witnesses and his family.

On May 4, two assailants abducted and detained at gunpoint the head of FAMDEGUA and her driver before stealing their vehicle. The timing of the event, combined with the fact that the assailants conducted prior surveillance of FAMDEGUA's offices and knew the victims whom they abducted, strongly suggests a planned attack.

On June 11, armed men abducted an international member of a visiting Amnesty International delegation as she tried to enter her hotel room in the capital. The assailants threatened her, tied her up, and left her unconscious for several hours at the bottom of a stairwell in the hotel. Within hours of the event, the Interior Minister Byron Barrientos, publicly dismissed the event as a fabrication. In its 12th report, the MINUGUA concluded that it was impossible to dismiss the possibility of involvement by illegal or clandestine operatives who count on the support or acquiescence of authorities of the state.

On October 2, the laptop of Matilde González Izas, researcher for the Association for the Advancement of Social Sciences (AVANSCO), was stolen from her home, while nothing else was touched. In addition, González received telephone threats and was surveilled and followed on numerous occasions. González was working on a report of post-conflict power structures linked to the military and former members of the Civil Defense Patrols in Huehuetenango and Quiché.

In September 2000, four armed men had entered the offices of FAMDEGUA and demanded keys to vehicles and money. They stole a FAMDEGUA vehicle, four computers, two laptops, a television, and other electronic equipment. The computers contained sensitive information about human rights complaints, statistics, and information regarding specific human rights cases, such as the Dos Erres massacre (see Section 1.a.).

In October 2000, an armed group assaulted the employees and robbed the offices of a group called Women Let's Advance. The assailants raped one employee, and stole several computers and other office equipment as well as the money and jewelry of the employees. In December 2000, 2 days after the press reported that the Archbishop's Human Rights Office would be bringing a genocide suit against General Efraín Ríos Montt, the Archbishop's Human Rights Office's legal coordinator Mynor Melgar and his family were threatened, tied up, and robbed at gunpoint in their home. While the event contained elements of common crime, Melgar was threatened, and the perpetrators' actions showed premeditation in directing their actions to him specifically. Despite his having identified one of his assailants, there was no progress in the case against Melgar's attackers. While each of these incidents, if taken separately, could be explained as a common crime, the frequency of such incidents was a cause for significant concern.

In April the IACHR published its fifth report on the human rights situation in the country. The report noted significant advances such as the end of the pattern and practice of human rights violations perpetrated as government policy during the civil war, increased political participation, the incorporation of previously excluded

sectors of civil society in the development and implementation of public policy, the initiation of the process of demilitarization, and the taking of steps to establish the truth about the fundamental violations that were a cause and a consequence of the conflict. The Commission defined the paramount challenge facing the country as the creation of a judicial system that offers effective protection for the rights of the population. In addition, the Commission noted that "a state of impunity continues for human rights violations."

MINUGUA maintained a human rights verification staff of approximately 70 persons, with 13 regional or subregional offices to monitor implementation of the human rights provisions of the Peace Accords and strengthen democratic institutions. MINUGUA stated that the Government generally cooperated with its investigations but cited occasional isolated incidents in which government officials or institutions had obstructed its efforts.

On July 27, the United Nations Commission on Human Rights (UNCHR) expressed its concern that the absence of a policy against impunity prevented the effective identification, trial, and punishment of those responsible for numerous cases of human rights violations. U.N. Special Rapporteur for Justice, Param Cumaraswamy, visited for several days in May. In the course of his visit, Cumaraswamy noted a deterioration in the security of justice sector workers (see Sections 1.c. and 1.e.).

Every 5 years, Congress elects the Human Rights Ombudsman from three candidates chosen by the Congressional Committee on Human Rights; the next election is scheduled to occur in August 2002. The Ombudsman reports to Congress and monitors the rights provided for by the Constitution. The PDH's rulings do not have the force of law. Relations between the Human Rights Ombudsman's office and MINUGUA were strained and distant. Upon the expiration of the MINUGUA's mandate, which is scheduled for 2003, the Human Rights Ombudsman's Office is to take over the human rights verification function, but there was little preparation for the transfer of that responsibility by either party. MINUGUA sources suggested that the Human Rights Ombudsman's Office rejected attempts to engage it in meaningful preparations. In November press reports accused Dr. Julio Arango Escobar, the Ombudsman, of using official funds to start a political party. Also in November, the Commission for the Defense of Human Rights in Central America criticized Arango for nepotism and for not actively promoting judicial action in cases of human rights abuses.

COPREDEH, the President's own commission for human rights, came under attack from hard-liners within the Government opposed to the initiatives taken by the organization to advance a responsive and forward-looking human rights policy. In May, while President Portillo was out of the country, hard-liners succeeded in bringing down the organization's President, Victor Hugo Godoy. Before being fired by Vice President Francisco Reyes, Godoy played an instrumental role in revitalizing the Government's human rights policy, primarily by acknowledging and taking legal responsibility on behalf of the Government for cases involving grave human rights violations before organizations like the IACHR. The policy was designed to restore public confidence in the credibility of the Government, which initiated dialog on amicable settlements in some 79 of the 150 cases before the IACHR. Amicable settlements were negotiated in several important cases, including those of Nicholas Blake, Irma Flaquer, street child Marcos Fidel Quisquinay, and the Dos Erres massacre (see Section 1.a.).

In June the President named the former Director of the organization, Ricardo Alvarado, to replace Godoy with the pledge of preserving continuity and follow through on human rights policy. The pledge was short-lived; in July the President asked Alvarado to step down. On July 22, COPREDEH broadcast a short video on the Dos Erres massacre as part of the amicable settlement reached in the case. FRG hard-liners called for the complete dissolution of COPREDEH. The President refused to sign a decree that called for COPREDEH to be dissolved; however, he did name Alfonso Fuentes Soria, who was acceptable to conservatives within the Government, as the new head of the organization.

On June 27, the President signed a presidential decree creating a Peace and Harmony Commission. The Commission was originally envisioned as an independent foundation by the Historical Clarification Commission to oversee the implementation of the Peace Accords. The Human Rights Ombudsman and 27 organizations comprising the consultative representatives of civil society announced that they would boycott the organization. They criticized the unilateral manner in which the Commission was created and its failure to embody the independence of a foundation or the thoroughgoing implementation of the Accords, including, for example, a national exhumation policy.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution states that all persons are free and equal in dignity and rights, and that the State must protect the life, liberty, justice, security, peace, and development of all citizens. However, in practice the Government frequently is unable to enforce these provisions, due to inadequate resources, corruption, and a dysfunctional judicial system (see Sections 1.c. and 1.e.).

Women

Violence against women, including domestic violence, remained common among all social classes. The 1996 Law on Domestic Violence provides that the Prosecutor's Office, the national police, family courts, legal clinics, and the Human Rights Ombudsman's Office can receive complaints of domestic violence. Domestic violence is defined as "whatever action or omission by direct or indirect manner causes damage, or physical, sexual, psychological, or patrimonial suffering" to a person within the family group. The law provides for the issuance of restraining orders against alleged aggressors and obligates the PNC to intervene in situations of domestic violence. Statistics vary significantly. The Prosecutor's Office reported receiving 8,060 complaints of domestic violence against women and children during the year, 44 percent more than those received in 2000. Only 56 cases were brought to trial; in 38 cases the attackers were convicted. The PDH reported that between November 2000 and October, they received 5,664 reports of domestic violence. They also estimated that for every 1 reported case, there are 10 more that are not reported.

Complaints of spousal abuse continued to rise due, at least in part, to increased nationwide educational programs, which have encouraged women to seek assistance. In November 2000, the Government announced the formation of the National Coordinator for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI), which is chaired by the Secretary for Women's Affairs, and includes public sector representatives from the Prosecutor's Office, the judiciary, the National Statistics Institute, and three representatives from the private sector Network Against Violence Against Women. On January 5, CONAPREVI released its National Plan for the Prevention of Domestic Violence. In May CONAPREVI announced that it had developed a uniform and simplified documentary process for victims to file complaints of domestic violence. The new form contained 43 questions that enable authorities to establish the nature of the offense and to accumulate meaningful statistics.

The office of the Ombudsman for Indigenous Women, led by Juana Catinac Xom de Coyoy, provides social services for victims of domestic or social violence, as well as mediation, conflict resolution, and legal services for indigenous women. It formed a coordinating committee and other advisory boards and representative assemblies from each of 24 linguistic groups. It opened its first branch offices and spent much of its first year resolving personnel, equipment, and organizational issues.

Sexual offenses and prostitution continued to increase. The Prosecutor's Office reported receiving 1,550 cases of rape and sexual assault during the year. A total of 37 cases went to trial, and convictions were attained in 25 cases. The penal code does not include a description of sexual assault as a crime.

Victims rarely reported criminal sexual violence, although the number of complaints of such offenses continues to increase significantly. Many observers believed that increases did not reflect an increase in the number of rapes committed, but rather an increased willingness on the part of victims to come forward, greater public confidence in the police, and improved record keeping of crime statistics. Despite these advances, relatively few rape cases went to court, in large part because police have little training or investigative capacity for such crimes and because many rape victims were reluctant to report and prosecute such crimes. In July 2000, the Public Ministry created a Special Victim's unit, staffed 24 hours a day with doctors and nurses with rape test kits to assist rape victims in gathering evidence to use against their attackers. The law allows a rapist to be exonerated when the victim is at least 12 years old and agrees to marry him, but the Public Ministry must approve the marriage when the victim is below the age of 18.

The law does not prohibit sexual harassment, which is common in the workplace. A Human Rights Watch report alleged that female domestic and maquila workers face discrimination and sexual harassment (see Section 6.e.)

Prostitution is not illegal; there are certain health code requirements for persons engaging in prostitution. The number of prostitutes increased during the year, although no exact figures were available. Pimping and inducing a person into prostitution are crimes that can result in either fines or imprisonment, with heavier penalties if minors are involved. Trafficking in women, primarily for the purpose of prostitution, is illegal and a growing problem (see Section 6.f.).

The Constitution asserts the principle of equality between the sexes. Nonetheless, in practice women face job discrimination and are less likely to win management positions. The PDH estimates that women generally receive significantly lower pay than men; in many cases one quarter of the salary for the same work performed. Some women were subjected to preemployment pregnancy tests. Women are employed primarily in low-wage jobs in the textile industry, agriculture, retail businesses, and the public sector. More working women than men are employed in the informal sector of the economy, where pay and benefits generally are lower. Women may own, manage, and inherit property on an equal basis with men.

In March MINUGUA reported that more than half of indigenous women cannot read. More than 50 percent of urban girls and 81 percent of rural girls drop out of school. According to the PDH, only 17 out of every 100 girls complete primary school. In May MINUGUA reported that the percentage of female heads of household increased from below 17 to more than 20 percent. In urban areas, nearly one in four households is headed by a woman.

In May 2000, the Administration announced the creation of a Secretariat for Women's Affairs. The Secretariat operates under the direction of the President, advising him on the coordination of policy affecting women and their development. In January Dr. Lily Caravantes, Presidential Secretary for Women, presented to the President an extremely ambitious National Policy for the Promotion and Development of Guatemalan Women and Plan for Equal Opportunity 2001-2006. Based on the recognition that 70 percent of women live in poverty, the strategic plan identified and prioritized areas of critical importance for women, ranging from access to health care and education, to protection from domestic violence. The National Women's Forum, a group formed in 1997 to promote women's issues, actively participated in the elaboration of the plan and contributed proposals in each of the prioritized areas. The Forum also continued to sponsor programs to encourage political participation and to monitor, evaluate and advise on the implementation of those elements of the Peace Accords that focus on women's issues.

In June the first 11 female cadets graduated from the country's military academy. Also in December a second class graduated with 5 female officers. In December, the last police academy graduation class of the year included 93 women out of a total of 706 new officers.

Children

The Constitution charges the Government with protecting the physical and mental health, as well as the moral well-being, of minors. However, despite these provisions, the Government does not devote sufficient resources to ensure adequate educational and health services for children. During the year, the Government budgeted approximately \$350 million (2.8 billion quetzals) for education and \$213 million (1.7 billion quetzals) for health care; however, the percentage of the country's GDP that was spent on education decreased from 2.3 percent in 2000 to 1.6 percent.

A December 2000 MINUGUA report found that 51 percent of the population is under 18 years old; of this group, 83 percent live in poverty. According to the National Council on Nutrition and Food Security, 13 percent of the population suffered from low birth weight, and 40 percent of the population lacks access to potable drinking water. There are approximately 200,000 orphans throughout the country, approximately 10,000 children in gangs, and 6,500 children living on the streets. More than 450 children have disappeared since 1996.

The Constitution provides for compulsory education for all children up to the 6th grade. However, less than half the population actually receives a primary education, and only 3 of 10 students who begin primary school complete it. One-fourth of all children do not attend school. These are concentrated in rural areas, and a disproportionate number are indigenous girls. Only one of eight girls who begin school graduates from the 6th grade. According to the December 2000 MINUGUA report, the average Guatemalan child receives 2.3 years of education; however, when only indigenous children are considered, the average drops to 1.3 years of education. Children in rural and indigenous areas are less likely to complete primary school.

According to the Ministry of Education, approximately 2 million children between the ages of 5 and 12 were enrolled in schools during the year. The Ministry also reported that 526 communities had access to educational services for the first time, benefiting approximately 33,000 children, for which the Ministry hired 815 educational promoters. PRONADE, a privately run program under the auspices of the Ministry of Education, continued to give incentive scholarships to girls, although due to budget cuts, only 10,000 were granted, a significantly smaller number than in 2000.

Public health analyses showed that 60 percent of the cases of infant mortality and 76 percent of the cases of maternal mortality were preventable through attention to basic health and environmental measures that have been neglected. The Peace Accords, recognizing the systematic violation of children's right to health, called for a 50 percent reduction in infant and maternal mortality and a 50 percent increase in public health spending. Health coverage has increased since the signing of the Accords, but government commitments have begun to taper off. Approximately 1,340,000 women and children did not have access to basic health services during the year.

In June the Archbishop's Human Rights Office released an annual report, which noted that malnutrition affected some 46 percent of the country's children; infant mortality impacts 45 children per 1,000. In June and July, several children reportedly died of malnutrition and illnesses associated with contaminated drinking water.

in the poor rural area of Fraijanes. In early August, there was an outbreak of more than 600 cases of tuberculosis.

Most estimates indicated that reports of child abuse continue to increase, although there are few statistics available to measure the problem. The Procuracy General reported 1,126 cases of child abuse as of December 2000, compared to 1,478 cases in 1999. A total of 70 cases reported during 2000 concerned physical abuse; the remainder involved sexual or psychological abuse. Of a total of 4,250 cases of domestic violence, the PDH investigated 126 complaints of child abuse during 2000. The largest percentage of these complaints were for physical, emotional, and sexual abuse, as well as neglect. A July press report suggested that of the 7,760 cases of child sexual abuse considered by the Prosecutor's Office, only 50 resulted in convictions. A Permanent Commission for Children and Youth investigates cases of mistreatment of children. The Social Secretariat for the Welfare of Children has oversight for the children's welfare program, treatment and training for children, and special education assistance for children. The Secretariat provides shelter and assistance to children who are victims of abuse; however, due to lack of resources, these children sometimes are placed with other youths who have committed crimes (see Section 1.c.).

In January the PDH investigated complaints of physical and sexual abuse in numerous schools, and officially censured both the directors of the schools implicated as well as authorities within the Education Ministry charged with oversight of public schools.

Former military commissioner Victor Vicente Poroj raped 11-year-old Ana Maria Pichol Guarca on four occasions in December 1999. A forensic doctor in Chimaltenango confirmed the crime. The father, according to indigenous practice, demanded an explanation from Poroj. Poroj intimidated and threatened the family for being part of a citizens group, and filed a complaint of slander. The prosecutor assigned to the case, Villar Anleu, gave little importance to the case and appeared to resent the father for bringing the case. The father requested that the prosecutor be excused for bias. The father was imprisoned for 2 days for the slander charge against him. On February 19, several days before the trial was scheduled to open, Melchor Pastor Hernandez and Juvencio Ixmay kidnaped Ana Maria's older sister Marta Elena. Poroj continued to threaten the father, but also offered him a bribe to drop the case.

On October 23, 2000, a 15-year-old girl, accompanied by her mother, filed rape charges with the Victim's Assistance Unit of the Prosecutor's Office (OAV) in Zacapa against Freddy Barrientos Alfaro, an assistant prosecutor for minors. Enrique Sosa Solis, the District Prosecutor, interviewed the plaintiffs who then decided to drop all charges against Barrientos. However, according to the Penal Code, rape of a minor must be investigated by the Prosecutor's Office, irrespective of whether charges are pending. Because the accused worked for Sosa, the latter recused himself from the case. On December 10, 2000, prosecutors from the neighboring department of Chiquimula opened a criminal investigation. On December 12, 2000, the prosecutor requested that Judge Cecilia Isabel Paiz issue an arrest warrant for Barrientos on rape charges. The Judge requested to be excused from the case, but her request was denied. On February 8, she proceeded with Barrientos's apprehension, but immediately after hearing his plea, approved that he be kept under house arrest and present himself every 15 days. The prosecutor's investigation failed to clarify the facts of the case or even whether the crime occurred. On June 26, Judge Paiz shelved the case and lifted all constraints on Barrientos. Throughout the entire period, Barrientos, despite being charged with rape of a minor, continued working as the assistant prosecutor for minors.

Sexual exploitation of children is a growing problem, including child prostitution and the trafficking of children for purposes of prostitution. In a March report, the Institutional Coordinator for the Promotion of the Rights of the Child found that there are more than 15,000 sexually exploited boys and girls in the country. The Ministry of Labor noted an increase in child prostitution in the towns along the borders with Mexico and El Salvador. Along the border with El Salvador, many child prostitutes were brought into the country from El Salvador, Nicaragua, and Honduras by organized rings, who force the children into prostitution (see Section 6.f.). The proposed Minor's Code would have mandated stricter punishments for parents who force their children into prostitution, and for adults who solicit child prostitutes. In November the Social Secretariat for the Welfare of Children, in conjunction with a commission of NGO's and other government ministries, presented the National Plan of Action against Sexual Exploitation of Children in Guatemala. The plan is an initiative to fight child prostitution and pornography, trafficking of children, and sex tourism.

Child labor is a problem; however, in July the government initiated a program to eliminate the worst forms of child labor (see Section 6.d.)

The internal conflict left approximately 200,000 orphans throughout the country. Approximately 10,000 children were in gangs, and 6,500 children lived on the streets; there are an estimated 4,000 street children in Guatemala City. In August 2000, the Archbishop's Human Rights Office issued its report on children missing in the armed conflict (see Section 1.b.). A report by the Archbishop's Human Rights Office issued in September found that children accounted for 20 percent of the victims of arbitrary extrajudicial executions during the

armed conflict, and that 27 percent of the victims of sexual abuse committed during the armed conflict were children.

Abuse of street children remained a serious problem in major cities (see Section 1.c.). Most credible estimates put the number of street children at approximately 6,500 nationwide, with about 4,000 of these youths concentrated in Guatemala City. The NGO Casa Alianza increased its estimates of the number of homeless persons to 25,000, of whom 8,000 are children. The majority of street children ran away from home after they were abused. Criminals--reported to include private security guards and corrupt police or military personnel--often recruited these children into thievery or prostitution rings. According to Casa Alianza, drugs, prostitution, and gangs posed the greatest danger to this vulnerable group during the year. Individuals, private security guards, and other street children--not police or other government forces--committed most violence against street children. In May Casa Alianza lodged formal complaints against two private security guards for the rape and shooting of street child Sandra Herlinda Ponciano Ichiche. The Government and a number of NGO's operate youth centers, but the funds devoted to them are not sufficient to alleviate the problem. The Government maintains one shelter for girls and one shelter for boys in Guatemala City; these shelters provide housing for the homeless and incarceration for juvenile offenders. A new phenomenon developed as street children began giving birth to a second generation of street children, called "street babies."

In November 2000, the Government, in compliance with a decision by the IACHR, agreed to compensate the families of the street children who were killed between 1990 and 1995 (see Section 1.a.). In addition to the modest \$11,500 (92,000 quetzals) per victim compensation, the Government also promised to develop programs to prevent the abandonment of and violence against street children. The payment was made in December, but there has been little progress on the additional commitments.

COPREDEH continued weekly meetings of the Permanent Commission for Children, composed of representatives from Casa Alianza and from the judicial and executive branches, with the aim of addressing the problems of street children. The Government continued its program to train instructors to educate civil society groups and the public about children's rights. In May the Supreme Court presented a project to modernize the juvenile justice system (see Section 1.e.).

In February a study by the Human Rights Ombudsman's Office found anomalies in a high percentage of the adoption cases reviewed. On July 1, police rescued four infants they claimed were being cared for under orders from attorneys who sell children for adoption. A similar press report on July 2 reported that police apprehended "baby stealers" who allegedly tried to buy, and then steal the baby of a mother as she was leaving the hospital.

Persons with Disabilities

The Constitution provides that the State should protect persons with disabilities; however, persons with physical disabilities suffer discrimination in education and employment practices, and few resources are devoted to combat this problem or to assist persons with disabilities. In 1996 Congress passed the Law on Protection of the Elderly and the Law on Attention to Disabled Persons, which mandates equal access to public facilities, prohibits discrimination based on disability, and provides other legal protections. The law defines a person with disabilities as one whose physical, mental, or emotional deficiencies limit performance of normal activities. It stipulates equal opportunity for persons with disabilities in health, education, work, recreation, sports, and cultural activities. It also provides that all persons with disabilities receive the benefits of labor laws and social security and have the right to work. In addition, the law establishes equal education opportunities, the requirement that buildings meet access codes, and the right to equal pay. Government efforts to implement the legislation have been weak. While the National Council for the Disabled, composed of representatives of concerned government ministries and agencies, met regularly to discuss initiatives, essentially no resources have been devoted to the implementation of their recommendations. In its 2001 report, the PDH highlighted the situation of persons with disabilities (estimated at 1 percent of the population), noting that they are marginalized; suffer from discrimination; and have limited access to health care, recreational, educational, and work opportunities. Children with physical disabilities often are discouraged from attending public schools, as teachers believe that they will not learn at the same speed as others. The majority of the universities are not handicapped accessible. The PDH reported that the National Hospital for Mental Health, the dominant healthcare provider for persons with mental illness, lacks basic supplies and equipment. Patients suffer from unhygienic living conditions and a shortage of medical professionals. Reports of sexual abuse by the staff are common.

Indigenous People

The Constitution states that the country is composed of diverse ethnic groups and obliges the Government to recognize, respect, and promote the lifestyles, customs, traditions, forms of social organization, and manner of

dress of indigenous people.

Indigenous people constitute over one-half the population but remain largely outside of the country's political, economic, social, and cultural mainstream. An October 2000 U.N. report stated that 73 percent of indigenous persons, and 72 percent of those living in rural areas, face an institutional lack of economic possibilities and limited access to basic services. The 1994 census, the most recent, stated that 42.8 percent of the population is indigenous; however, most observers believe that this figure is low and that indigenous people constitute a majority of the population. There is no single indicator of indigenous status, and there are at least 22 separate Mayan ethnic groups, each with its own language. In addition to the indigenous Mayan groups, there is an indigenous Xinca community of some 6,000 persons. The Garifuna, descendants of Africans brought to the Caribbean region as laborers who later migrated to South and Central America, are a separate minority group.

In 2000 when the Government designed a new 2000-2004 timetable for the implementation of the Peace Accords, it remained clear that the majority of the provisions regarding indigenous rights were incomplete. Among the initiatives still pending are educational reforms that include bilingual and intercultural components, promotion of the use of indigenous languages, and the conservation and protection of ceremonial sites.

Indigenous people were the most common victims of extrajudicial killings and other serious human rights abuses during the internal conflict. The commissions established to discuss the implementation of constitutional provisions relating to indigenous rights met during the year to formulate recommendations to the Government regarding protection of indigenous culture, languages, traditions, lands, and sacred sites. Indigenous people continued to organize themselves into interest groups to promote bilingual education, women's rights, and community development. Politically, the indigenous groups remained fragmented, and there was little agreement among the Mayan groups on common goals or strategies to increase their political representation and power. The Government devoted marginally increased resources to bilingual education. Since 1999 there have been no reports of schools denying children the right to wear traditional indigenous dress, a common complaint under the previous administration.

Rural indigenous people have limited educational opportunities and thus have fewer employment opportunities. For this reason, indigenous men constitute a very high percentage of the military's ranks. Many indigenous people are illiterate or do not speak Spanish. A disproportional number of indigenous girls do not attend school. The Government has devoted little resources to bilingual education and the Ministry of Education has yet to implement the recommendations made by the Commission on Educational Reform. In 1998 the Indigenous Languages Officialization Commission issued a report in which it recommended that a variety of public services be provided in the four most widely spoken indigenous languages (K'iche', Q'eqchi', Mam, and Kaqchikel), with a lesser degree of services provided in less widely spoken indigenous languages. This initiative is pending implementation under the recalendarization of the Peace Accords.

In 1997, as called for by the Peace Accords, a Commission for the Definition of Sacred Places was created to discuss the mechanism for the administration, use, and preservation of places sacred to indigenous people. The commission dissolved in 1998 without reaching an agreement, but was reinstated in October with the mandate to design a policy to establish, recognize, and protect such areas.

Indigenous people arrested for crimes often are at a disadvantage due to their limited comprehension of Spanish. The Criminal Procedures Code states that the courts must provide interpretation for anyone requiring such services during criminal proceedings. According to the Planning Office of the Public Ministry, during the year, there were 87 interpreters at all levels of the legal system, from the police to the formal courts, to assure non-Spanish speakers the means to bring complaints, resolve conflicts, and provide testimony. Interpreters were concentrated in former conflict areas of the country; more interpreters were in training. Despite these initiatives, reports continued that indigenous people often did not have equal access to the justice system. In June four persons were detained in El Estor as suspects in a homicide case. They subsequently were transferred to Zacapa where their statements were taken. Because one of the men spoke only Kekchi, and the Public Ministry in Zacapa had no interpreter available; the judge allowed one suspect to translate for another. The Public Defender's Office began hiring attorneys fluent in indigenous languages and assigning them to areas where they could serve as translators in addition to defending their clients. By year's end, they had hired five bilingual public defenders. The Government also made efforts to recruit justices of the peace who are bilingual in Spanish and an indigenous language. The University of San Carlos offers a postgraduate degree in indigenous customary law. Judges, prosecutors, public defenders, judicial translators, and others already have received the degree, which emphasizes criminal law and human rights.

In August the public defender's office created offices in Quetzaltenango, Quiche, and Alta Verapaz to reduce discrimination against indigenous people, particularly by providing access to the justice system.

In 511 tribunals around the country there are only 69 judges that speak Mayan languages and only 60

interpreters assist the remainder. In the police, 14 percent of officers are indigenous.

On April 26, the UNCHR unanimously approved the creation of a Special Rapporteur for the defense of the rights of indigenous people. On May 18, UNESCO declared the language, dances, and music of the Garifuna people to be part of the international cultural patrimony. The measure, intended to help protect the Garifuna culture, largely was unnoticed, even by officials from the coastal area of Izabal where the Garifuna populations are located. The culture of another very small ethnic group, the Xinca of southeastern Guatemala, was also in danger of extinction.

In late May, the military base at Quetzaltenango hosted a day of reconciliation with representatives of 23 ethnic groups from around the country. More than 80 percent of the victims of killing during the war were Mayan, and 93 percent of the human rights abuses were committed by the military. Some observers criticized the event as a farce, while others described it as an important first step toward reconciliation. In June the President announced that every public school in the country would receive a series of texts: Literary works, reference books and historical works. Included in the package is the Popol Vuh, a primer on Mayan cosmology.

Section 6 Worker Rights

a. The Right of Association

The Constitution and the Labor Code provide workers with freedom of association and the right to form and join trade unions; however, in practice the government does not enforce effectively labor laws to protect workers who exercise their rights. All workers have the right to form or join unions, including public sector employees, with the exception of members of the security forces. Approximately 2 percent of the work force is unionized. The Government does not control unions. There is no state interference in union activities; however, internal intelligence services may monitor the activities of some politically active union leaders. In April and May the National Legislature passed two sets of reforms to the national Labor Code. An ILO direct contacts mission headed by Adrian Goldin that visited the country in April noted that these reforms "constitute a significant step forward in the application of Conventions Nos. 87 and 98, in that they repeal or amend many of the provisions criticized by the Committee of Experts. The first set of the new labor law reforms redefined the mission of the Labor Ministry, from exercising "strict oversight to ensure unions operate legally" to guaranteeing "the free exercise of union rights." The May reforms also permitted industrial, or sectoral, unions. Legal recognition of a new industrial union requires that the membership constitute one-half plus one of the workers in an industry. Labor activists consider this requirement to be a nearly insurmountable barrier to the formation of new industrial unions.

The May reforms accord initial jurisdiction over labor law violations to the Labor Ministry, and set forth procedures for processing complaints, making initial determinations, and fining violators--new enforcement powers previously reserved to the labor courts. The Ministry of Labor may levy substantial fines for violations of labor rights; however, in practice, the Ministry has not used these new powers. Fines may be appealed to the labor courts. The labor inspection system remains ineffective, inadequate, and corrupt, despite continuing efforts at improvement. Low pay, the lack of a strong ethic of public service, and ineffective management prevent the Ministry from providing effective, honest service.

Retaliation--including firing, intimidation, and sometimes violence--by employers and others against workers who try to exercise internationally recognized labor rights is common and usually goes unsanctioned. In April the government accepted the visit of an ILO Direct Contacts Mission to investigate lack of progress in investigations of about a dozen killings of unionists between 1995 and 2000. In June the Prosecutor's Office assigned a Special Prosecutor for Crimes Against Unionists and Journalists to review these and all new cases involving unionists. Clarification of these crimes would establish which of these crimes constitute violation of the right of association. The Prosecutor's Office is handling 38 cases against unionists, 19 cases were in the investigatory phase at year's end. One arrest warrant was issued against the Mayor of Tumbador, San Marcos Province, Fredy Radinel Vasquez Orozco. He was arrested for labor rights violations but was released. The ILO's Committee on Freedom of Association continues to monitor about a dozen allegations of serious violence against individuals for unionizing activities that lack credible investigations, prosecutions, or trials. The most common violation of freedom of association is the dismissal of workers for unionizing activity. Some workers who alleged illegal dismissal take their case to the labor courts and win injunctions of reinstatement. Appeals and reappeals by the employers, along with legal ploys such as reincorporation as a different entity, often prolong proceedings for years. The labor courts do not dismiss frivolous appeals, nor are their decisions enforced. According to Labor Ministry officials, the labor courts vindicate the majority of workers' claims against employers; however, employers comply with the court decisions in only a small number of cases, creating a climate of impunity. Often employers are not disciplined for not complying with legally binding court orders.

In 1998 DYMEL, SA was contracted to build a coal-fired power plant. During construction of the plant,

DYMEL's workers, most contracted for the duration of the construction phase of the project, formed a union. DYMEL then fired 72 union organizers without required court permission. The workers went to court and won a judgment reinstating them with back pay. After appeals by DYMEL, the verdict was upheld by the Constitutional Court in May. Meanwhile, DYMEL had completed the project, reorganized its corporate identity to shelter itself from claims, and moved all assets and operations back to El Salvador. The workers began a hunger strike on the doorstep of the Presidential Offices in late November, which continued at year's end.

Throughout the economy, employees were reluctant to exercise their right of association for fear of reprisal by employers. Workers had little confidence that the responsible executive and judicial institutions would defend effectively their rights as employees when employers violated those rights. In addition the weakness of labor inspectors, the failures of the judicial system, poverty and lack of education, the legacy of violent repression of labor activists during the internal conflict, a climate of impunity, and the deep-seated hostility of the business establishment towards independent and self-governing labor associations constrained the exercise of worker rights. In addition to the ILO's criticism, MINUGUA's 4th Report on the Peace Process noted that "genuine trade union freedom does not exist" due to antiunion violence. It also reported a significant gap between the problems regarding workers' rights and the resources applied by the Government to solving these problems.

On December 21, Baudilio Cermeno Ramirez, the Organization Secretary of the Light and Energy Union, was murdered when leaving his home. The case is being investigated by the Special Prosecutor's Office. At year's end, no results of the investigation were available. While union groups called for a thorough investigation, there was no public evidence that the murder was politically motivated.

An investigation continued into the June 2000 killing of Oswald Monzon Lima, the Secretary General of a fuel drivers' union. He had been fired for forming a union at the trucking firm and for criticizing the corruption widespread in the firm.

An active "solidarismo" movement claims to have approximately 170,000 members in about 400 companies. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to choose between the two or to belong to both. The Government views these associations as civic organizations that need not interfere with the functioning of trade unions. The Labor Code stipulates very clearly that trade unions have an exclusive right to negotiate work conditions on behalf of workers. However, unions charge that management promotes solidarity associations to avoid the formation of trade unions or to compete with existing labor unions. Representatives of most organized labor groups criticize these associations, asserting that they do not permit strikes, have inadequate grievance procedures, and are meant to displace genuine, independent trade unions and are employer-dominated. There were credible reports that some associations did not adhere to democratic principles.

The administrative process for unions to obtain legal status has been simplified over the past decade. In 1996 the Ministry of Labor reduced the number of steps needed to adjudicate union applications and mandated a deadline of 20-workdays for reaching a decision. Labor Code reforms adopted in April authorized the Labor Ministry to establish a free legal assistance service for workers who desire to unionize. Labor Code reforms adopted in May contained provisions designed to further simplify the Ministry's application and recognition process, and strengthen union members' ability to demand transparency in union activities. The Ministry of Labor registered 60 new unions during the year and accredited 120 new union elections during the same period. In 2000 The Labor Ministry granted legal status to 45 unions, and in 1999 there were 1,389 registered unions--401 in the public sector and 988 in the private sector.

The approximately 1,300 registered unions were generally independent of government and political party domination.

In March a trial court's 3-judge panel unanimously convicted 22 individuals (among them most of the leaders of the vigilante action) on charges of coercion and illegal detention for the October 1999 take over of a SITRABI banana workers union hall. All were acquitted of aggravated trespass, the third charge lodged against them. The court sentenced each of the 22 to terms of 3 years and 6 months, commutable by payment of fines. The fines varied depending on the income level of the individual convicted. After testifying at the trial, the SITRABI union leaders who were the principal targets of the vigilante assault fled the country for fear of retaliation. Leaders of the group repeatedly threatened to kill some of the union leaders. During the incident, about 20 rank and file union members were held captive. Various union leaders and rank and file members were pushed and beaten. Union leaders were forced to sign letters of resignation from their positions in the union and from their jobs. BANDEGUA had fired nearly 900 workers in September 1999, in violation of the contractual agreement in force between the enterprise and the trade union.

According to MINUGUA, law enforcement failures in this incident included police inaction as the incident took place and lapses in applying the Code of Criminal Procedure during the indictment phase. In June 2000, the

court of first instance had rejected charges of abduction, intimidation, aggravated trespass, and aggravated illegal detention sought by the prosecution and instead arraigned 24 defendants on lesser charges of trespassing, detention, and coercion.

In October 2000, the Ministry of Labor facilitated the completion of a collective bargaining agreement between the SITRABI union and the contractors who had taken up operating the plantations on which the 900 workers previously had worked as direct-hire BANDEGUA employees. In February BANDEGUA and its remaining direct-hire workforce agreed to a collective bargaining agreement. Despite some efforts by BANDEGUA, its independent contractors, and the SITRABI union, labor relations were marred by wildcat strikes and angry confrontations between workers and management. The union alleged that BANDEGUA and its independent producers had failed to meet some of their commitments under their respective collective bargaining agreements, including payment of mandatory social security taxes and provision of enough piecework to permit workers to earn the minimum wage. In addition, these agreements called for the reinstatement of the fired workers. According to SITRABI, by year's end, this issue was resolved, and no former BANDEGUA workers were seeking reemployment.

On July 18 and 19, antiunion workers attacked union organizers involved in a legally registered union organizing drive in the Choi Shin/Cimatextiles maquila plants. Credible reports allege that management through floor supervisors planned and organized the antiunion violence (consisting of beatings and bottle and rock throwing which caused several minor injuries) and intimidation. The police, claiming that the mob was out of control, refused to enter the factory to protect the workers under attack. Twenty-two unionists filed a complaint with the Special Prosecutor for Crimes Against Unionists. During the week following the violence, the Ministry of Labor brokered two agreements between union organizers, Choi Shin/Cimatextiles management, and the maquila employers association (VESTEX). Those agreements included management commitment to recognize the new unions and respect the workers' right to organize, reinstatement without loss of status and safe return to work for unionists, internal (company) sanctions of aggressor workers, and pledges by the company to assure all employees that it had no intention of closing because of the formation of unions. Subsequent to the antiunionist violence in July, union supporters and NGOs credibly alleged an ongoing low-intensity intimidation campaign by management, intended to limit participation in union organizing activities. Actions alleged have included physical harassment of a union leader by a private security agent on company property, force resignations and firing of some union members, threats of blacklisting, shifting production to other facilities, and creating an antiunion climate by promoting rumors that the factories would close as a result of unionization.

Violations of the right of association also occurred in the public sector. In September MINUGUA highlighted the cases of intimidation, threats, and illegal firings of municipal workers by public officials in Cuilapa, Santa Rosa; Guastatoya, El Progreso; Tecpan, Chimaltenango; and La Gomera, Escuintla. In addition, the management of Ministry of Health hospitals in the capital and in Cuilapa, Santa Rosa, refused to recognize union leaders or tried to replace them with others, and the Ministry has not complied with terms of a collective bargaining agreement negotiated by the previous Administration.

Workers have the right to strike. However, the very low level of unionization and procedural hurdles make legal strikes rare. The reforms adopted in May rescinded the provision--long noted by the ILO as an unwarranted constraint on the right of association--that prohibited seasonal agricultural workers from striking during harvest time. The Labor Code reforms adopted in April reduced from two-thirds to one half plus one the number of a firm's workers required to call a legal strike. The Labor Code requires that a labor court consider whether or not workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike. The Labor Code reforms adopted in May created new procedures that workers in essential services (health, utility, and communications) must follow to exercise legally the right to strike. However, other changes in the Labor Code gave the President and his cabinet the power to suspend any strike deemed "gravely prejudicial to the country's essential activities and public services." Employers may suspend or fire workers for absence without leave if authorities have not recognized their strike as legal. The strike regulation law calls for binding arbitration if no agreement is reached after 30 days of negotiation. For a strike to be declared, workplace election must be held, and 50 percent plus one person present, including workers and management, must vote in favor of the strike. The union then must petition a labor court for permission to strike. The judge calls the petitioners and employer representatives before the court and forms a Conciliation Tribunal to seek resolution of the conflict. If no agreement is reached, the parties can go to binding arbitration, or the judge may rule on the legality of the strike. In practice, this can be a lengthy process, and few strikes are upheld.

There were no significant legal strikes during the year. However, a 24-hour nationwide demonstration involving work stoppage was called by labor unions and then joined by employers, to protest Government plans to increase the value-added tax. The strike closed most factories and businesses for a day, but did not generate large crowds of protesters. However, there was rioting in two provincial capitals.

The Labor Code provides for the right of employers to fire union workers for cause, permits workers to appeal their dismissal to the labor courts, and requires the reinstatement within 24 hours of any unionized worker fired without cause. The Labor Code also prohibits employers from firing any member of the executive committee of a union and also protects them for 12 months after they are no longer on the executive committee. An employer may fire a member of the union's executive committee for cause only after a trial in a labor court and issuance of a court resolution. Even in clear-cut cases, labor laws have not been enforced adequately. Despite governmental, bilateral, and multilateral efforts to restructure and modernize the labor court system, the system remained ineffective. There are 20 labor courts--7 in the capital and 13 located elsewhere around the country. An additional nine courts address labor issues, primarily appeals, as part of their jurisdiction. The weakness of the judicial system as a whole, the severe shortage of competent judges and staff, a heavy backlog of undecided cases, and failure to enforce effectively court rulings, all contribute to the labor courts' lack of credibility and effectiveness. The small number of competent and motivated labor inspectors and the lack of training and resources devoted to detecting and investigating Labor Code violations compound the weakness of the labor courts. UNICEF, the ILO, and MINUGUA continue to urge the Government to speed up the administration of justice to ensure the strict enforcement of labor laws. MINUGUA singled out the Third Judge for Labor for egregious delays in legal procedures stemming from a dispute involving a bank workers union dating to 1997. The Judge took more than 3 years to convoke the parties before a conciliation tribunal, which should have taken place within 36 hours.

However, government efforts to improve the labor inspection system, begun in 2000, continued. After substantially expanding the size of the inspector corps in 2000, the Ministry of Labor increased its rate of inspections and fired some incompetent or corrupt inspectors. Some of these inspections involved a campaign to improve compliance with labor standards in the in-bond processing for export or "maquila" sector. Others focused on ensuring compliance with minimum wage provisions.

Under the revised Labor Code, complaints can be heard at the Ministry of Labor rather than requiring that inspectors travel to each work site. The Ministry also instituted a set of complaint assistance, small claims mediation, and information providing initiatives designed to provide better services to workers. The Ministry continued its educational campaign on worker rights (especially the rights of minors and women), which included a campaign of radio spots and the provision of some educational materials in indigenous languages. In an effort to improve enforcement of the Labor Code outside the capital, the Ministry of Labor continued to decentralize its operations. Seven of the Ministry's offices outside the capital have been accorded regional authority. These regional offices, in addition to labor inspectors, also include specialists in women and workplace issues, management-worker relations/conflict resolution, and minor workers/child labor issues. The Labor Ministry plans to give these regional offices supervisory authority over branch offices in the departmental capitals of each region.

The Human Rights Ombudsman's office for economic and social issues receives complaints related to violation of internationally recognized worker rights. The Human Rights Ombudsman's Office can investigate union complaints and issue a statement, but the office has no enforcement powers beyond attempting to resolve the situation through publicity and moral suasion. The Ombudsman made public statements about labor conditions in various sectors of the economy.

Unions may and do form federations and confederations and affiliate with international organizations.

b. The Right to Organize and Bargain Collectively

Workers have the right to organize and bargain collectively; however, the small number of unionized workers limits the practice of collective bargaining. The prevailing business culture ignores labor contracts because, in practice, they are largely unenforceable due to the weak, cumbersome and corrupt legal system. Labor Code reforms adopted in May reduced from two-thirds to one-half plus one the number of union members required to approve a collective bargaining agreement. The ILO Committee of Experts had called for this change; as well as a modification of the Labor Code requirement that the employer submit any new or modified collective bargaining agreement to the Labor Ministry within 15 days of an accord between union and management. This provision remains in practice. The ILO also noted other reforms necessary to provide for full exercise of the right to organize and bargain collectively.

The requirement that 25 percent of the workers in a factory or business must be union members for collective bargaining to take place, lack of experience, and management's aversion to sharing power with workers also limit the practice of collective bargaining. Management and labor honored collective contracts at some firms; in others, management, and sometimes labor, chose to ignore selected provisions of binding collective bargaining agreements. According to the Ministry of Labor, 23 collective bargaining agreements were registered during the year. Most workers, even those organized in trade unions, do not have collective contracts documenting their wages and working conditions, nor do they have individual contracts as required by law. According to a November 2000 study by the Association for Research and Social Studies, only 10

percent of workers have a contract duly registered with the Labor Ministry as required by law.

The Labor Ministry has worked to promote the restructuring of labor relations in enterprises by encouraging labor-management cooperation and to bring about a "culture of negotiation" as called for by the Peace Accord on Socioeconomic Aspects and the Agrarian Situation. Despite these efforts, productive, good faith negotiations between employer and worker representatives have been the exception rather than the rule. The majority of unions that engaged in collective bargaining during the year reported that some employers continued to reject the underlying premise of collective bargaining--that power in the workplace can be shared according to a contract between the employees and company management for the benefit of both.

The law protects workers from retribution for forming unions and for participating in trade union activities, but enforcement of these provisions is weak. Many employers routinely seek to circumvent Labor Code provisions to resist unionization. An ineffective legal system and inadequate penalties for violations have hindered enforcement of the right to form unions and participate in trade union activities in the past and perpetuates the violence that workers face if they attempt to exercise their rights.

The Labor Code prohibits employers from firing workers for union organizing and protects them from being fired for 60 days following notification to the Labor Ministry that a union is being formed. Thereafter, they can be fired for cause, unless they are members of the union's executive committee. During labor conflicts, unions frequently seek a labor court injunction, which prohibits firing without approval of a judge until the conflict is resolved. Although the Labor Code provides that workers fired illegally for union activity should be reinstated within 24 hours, in practice employers have filed a series of appeals or simply defied judicial orders for reinstatement. The Labor Code reforms adopted in May significantly increased--to the equivalent of 10-50 times the current minimum monthly wage--penalties for defying such orders. These reforms went into effect in July; however, effective utilization of these enhanced enforcement powers of the Ministry of Labor has proved difficult. The Labor Ministry, and its corps of labor inspectors in particular, continues to suffer from a lack of respect from employers, inadequate resources, and corruption (see Section 6.a.). As of November 7, the Labor Ministry reported that of 1,371 complaints received since passage of the May reforms to the labor code, only 156 received financial sanctions. Of those, only six had been paid at year's end. None of the fines amounted to more than five times the monthly minimum wage.

The Ministry of Labor has reorganized its labor inspection system to permit some complaints to be heard at the Ministry of Labor rather than requiring that inspectors travel to each work site. The Ministry instituted a set of complaint assistance, small claims mediation, and informational initiatives designed to provide better services to workers. The Ministry continued its educational campaign on worker rights (especially the rights of minors and women), which included a campaign of radio announcements and the provision of some documents in indigenous languages. In an effort to improve enforcement of the Labor Code outside the capital, the Ministry of Labor continued to decentralize its operations. Seven of the Ministry's offices outside the capital have been accorded regional authority. These regional offices, in addition to labor inspectors, also include specialists in women and workplace issues, management-worker relations/conflict resolution, and minor workers/child labor issues. The Labor Ministry plans to give these regional offices supervisory authority over branch offices in the departmental capitals of each region. The number of official inspections continues to increase, from 431 in 1999 to 4,127 in 2000 and 5,703 from January to October.

Labor laws and regulations apply throughout the country, including in the few export processing zones (EPZ's). (Maquilas that make garments for export operate under an EPZ-like regime, although they are not located in distinctly established areas.) The laws governing the EPZ's do not infringe on fundamental rights to organize trade unions or bargain collectively. However, there are no collective bargaining agreements between employers and any of the more 80,000 workers in the export processing zones. Union leaders often cite their inability to organize workers in these zones on employer intimidation and pressure as well as unofficial restrictions on their access to the EPZ's.

c. Prohibition of Forced or Compulsory Labor

The Constitution bars forced or compulsory labor; however, women are trafficked for the purpose of sexual exploitation (see Section 6.f.). Trade union leaders and human rights groups charge that work requirements sometimes forced workers to work overtime, often without premium pay (see Section 6.e.). The law does not specifically prohibit forced or bonded labor by children, but they are covered by the general constitutional provision. Forced or bonded labor by children generally did not occur; however, children were trafficked for the purpose of sexual exploitation (see Sections 5 and 6.f.).

d. Status of Child Labor Practices and Minimum Age for

Employment

The Constitution bars employment of minors under the age of 14 without written permission from the Ministry of Labor. However, the informal and agricultural sectors regularly employ children below this age, usually in small family enterprises. Economic necessity forces most families to have their children seek some type of employment to supplement family income, especially in rural and indigenous communities. In December 2000, MINUGUA found that 34 percent of children between the ages of 7 and 14 work. Most minors work at household chores, in subsistence agriculture, in family-run enterprises, and elsewhere in the informal economy.

According to the National Statistics Institute, from 1998 to 1999 there were 326,095 children doing paid work, and 495,780 doing chores in the home. An estimated 80 percent of work accidents involve 15 to 18 year old workers who lack proper safety training. The law prohibits minors from night work and extra hours (the legal workday for minors under the age of 14 is 6 hours; for minors 14 to 17 years of age, it is 7 hours), from work in establishments where alcoholic beverages are served, and from work in unhealthy or dangerous conditions. The ILO's International Program on the Elimination of Child Labor is active in the fireworks industry. The Labor Ministry estimated that approximately 10 percent of the children in this industry work illegally in factories, while younger children, under the age of 14, typically work at home on piecework taken in by their families. In July 2000, an explosion in a family-run home fireworks workshop killed three siblings, including a 13-year-old who were working in their father's illegal fireworks factory in San Raymundo Sacatepequez was typical of accidents that occur regularly in the informal cottage fireworks industry. According to press reports an average of 25 persons, the majority minors, suffer burns and amputations for accidents in the fabrication of fireworks. For example, on December 10, eight persons died in a clandestine fireworks factory in Villa Nueva, near the capital. The victims included a 12-year-old child and an 18-month-old child. Another 12-year-old survived with third degree burns. Between 3,000 and 5,000 children were employed in the illegal cottage-based fireworks industry.

Laws governing the employment of minors are not enforced effectively, due to the weakness of the labor inspection and labor court systems. The Association for Girls and Boys in Central America estimates that approximately 2 million children work in the region. The majority of child laborers work in agriculture (family farms, coffee, and sugar cane harvesting), while others work in domestic service, construction, various family businesses, stone quarrying, rock-breaking, fireworks manufacturing, shining shoes, begging, performing in the streets, or other jobs. Between 1995 and 1999, the Ministry of Labor issued 507 permits authorizing the employment of minors. The Ministry of Labor's efforts to reduce the number of these permits resulted in an increased number of minors applying for work with falsified age documents. Many children under the age of 14 work without legal permission and are vulnerable to exploitation. Their illegal status makes them ineligible to receive social benefits, social insurance, vacations, or severance pay, and they often earn salaries below the minimum wage.

The Labor Ministry has a program to educate minors, their parents, and employers on the rights of minors in the labor market. In 1992 the Government formed the Child Worker Protection Unit within the Ministry of Labor, which enforces labor restrictions on child labor, and educates minors, their parents, and employers on the rights of minors in the labor market. In 2000 the Ministry of Labor, with the support of a group of NGO's, finalized a National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers. In July the Ministry launched a national campaign to eliminate the worst forms of child labor. In September the Government ratified ILO Convention 182. The Government's main action to implement Convention 182 was the Cabinet's approval of the National Plan to Eradicate Child Labor in March.

The labor law does not specifically prohibit bonded labor by children; however, the Constitution prohibits forced or compulsory labor. Bonded labor by children generally did not occur; however, children were trafficked into prostitution (see Section 6.f.).

e. Acceptable Conditions of Work

The law sets minimum wages; however, noncompliance with minimum wage provisions in the rural and informal sectors is widespread. As minimum wage provisions have become more complex through inclusion of a monthly "incentive bonus" and as the minimum wage has risen during the year and with a deepening economic crisis affecting the coffee growing sector, noncompliance with the law, which was already high, also has risen. Advocacy groups that focus on rural sector issues estimate that more than half of workers engaged in day long employment in the rural sector do not receive the wages, benefits, and social security allocations required by law. Minimum wage laws do not extend to domestic workers.

The Ministry of Labor oversees a tripartite committee, made up of formal sector representatives of labor and management, that makes recommendations for increases in the minimum wage. In the event that agreement is not reached in the tripartite commission, the Government may decree such increases. The Labor Code reforms adopted in May placed responsibility for drafting the decrees setting new minimum wage levels, should there be no consensual proposal submitted by the tripartite commission, on the Labor Ministry.

On December 16, 2000, a minimum wage increase, promulgated by Executive Branch decree after the tripartite commission was unable to reach a consensus, took effect. This decree raised the minimum daily wage for agricultural work by \$0.45 (3.46 quetzals) to \$3.24 (25.08 quetzals). It raised the minimum daily wage for service, industrial, and government sector work by \$0.49 (3.82 quetzals) to \$3.57 (27.67 quetzals). In March 2000, the Congress mandated by decree an incentive bonus that augments the minimum wage by paying for each hour worked--\$0.09 (0.6725 quetzals) per hour for agricultural workers and \$0.08 (0.64375 quetzals) per hour for industrial and other workers. The legal minimum wage for a regular 8-hour day then became \$3.93 (30.46 quetzals) for agricultural work and \$4.32 (32.82 quetzals) for service, industrial, and government sector work. On August 6, the Government decreed an increase in the mandatory monthly bonus for all workers to \$31.25 (250 quetzals) from a previous level of \$20.20 (162 quetzals) for agricultural workers and \$19.30 (154 quetzals) for non-agricultural workers.

The minimum wage was not sufficient to provide a decent standard of living for a worker and family. According to the UNDP, at least 80 percent of the population, including approximately 60 percent of the employed, lives below the poverty line. The Ministry of Labor conducts inspections to monitor compliance with minimum wage provisions; however, the Ministry of Labor lacks the resources to enforce adequately the minimum wage law.

The legal workday is 8 hours and the workweek is 44 hours, but this is not respected, and a tradition of longer hours remains in place. These limits do not apply to domestic workers. The Labor Code requires a weekly paid rest period of at least 24 hours. Trade union leaders and human rights groups charge that work requirements sometimes forced workers to work overtime, often without premium pay. Labor inspectors report uncovering numerous instances of such abuses, but the lack of stiff fines or strong regulatory sanctions, as well as inefficiencies in the labor court system and enforcement of court orders, have inhibited adequate enforcement of the law.

Occupational health and safety standards are inadequate. Many of the provisions of the applicable law--dating to 1957--are archaic, making enforcement problematic. During the year, as part of its effort to address this situation, the Ministry of Labor participated in a number of regional international initiatives intended to sensitize employers and workers to health and safety risks in the workplace. The Labor Ministry provides training courses for labor inspectors in health and safety standards, and has given such training priority despite scarce resources.

Enforcement of occupational health and safety standards that do exist and could be applied reasonably is weak. When serious or fatal industrial accidents occur, the authorities often fail to fully investigate and assign responsibility for negligence, if any. Employers rarely are sanctioned for having failed to provide a safe workplace; however, the authorities did suspend one maquila operation for safety shortcomings, and threatened about a dozen others with a suspension of operations if they failed to improve safety conditions. Legislation requiring companies with more than 50 employees to provide onsite medical facilities for their workers has not been well enforced; however, most large employers did provide such facilities for their employees. The fireworks industry is particularly hazardous (see Section 6.b.). Workers have the legal right to remove themselves from dangerous work situations without reprisal. However, few workers are willing to jeopardize their jobs by complaining about unsafe working conditions.

A report by the Women's Rights Division of Human Rights Watch, alleged that women workers, especially in the domestic and maquila for-export manufacturing sector, suffer from high rates of discrimination and sexual harassment. One third of a sample of 29 domestic workers reported sexual harassment at work, according to the report. Labor law exempts domestic workers from the right to an 8-hour workday and the 48-hour workweek, provides domestics only limited rights to national holidays and weekly rest, and "by and large" denies domestics the right to employee health care under the national social security system. While the labor code stipulates that all workers have the right to the minimum wage, domestic workers are denied this right by executive decrees.

The report alleged that maquilas often obligate women to reveal whether they are pregnant as a condition of employment, either through questions on job applications, in interviews, or through physical examinations. Approximately 80 percent of the 80,000 maquila workers are women.

f. Trafficking in Persons

The law specifically prohibits trafficking and smuggling of persons; however, trafficking in women and children is a problem. The country is a source and transit country for international trafficking of persons. In a few cases, it is also a destination country. Trafficked persons come mainly from other Central American countries including El Salvador and Ecuador. Victims trafficked to Guatemala are usually young women or children who are trafficked for sexual exploitation. Most of the minors brought to the country are trafficked for sexual exploitation and placed in poor surroundings and paid low salaries. A 1999 study by the NGO Pro-niños, Niños

Centro Americanos (PRONICE) suggests that fraud and threats are a common form of recruitment. Usually traffickers choose pretty girls that belong to poor families. The most common "contracting places" are along the borders. Those trafficked from Guatemala for sexual exploitation are usually minors, both boys and girls, from poor families. The traffickers often approach these individuals and offer them lucrative jobs, which would allow them to make regular remittances back to their families. The methods of approach include promises of economic rewards, jobs in cafeterias or beauty parlors, or jobs in other countries. The means of promotion include flyers, newspaper advertisements, and verbal or personal recommendations.

The press has alleged that some Immigration Service officers accept bribes in return for allowing traffickers to bring children into the country for purposes of sexual exploitation.

The Government is making significant efforts to combat trafficking despite resource constraints and endemic corruption. The law specifically prohibits trafficking and smuggling of persons. The Government investigates trafficking cases; however, there have been no prosecutions of trafficking cases since victims often fail to press charges due to a cumbersome judicial system. Prison sentences for traffickers are commutable. The Government does not assist or protect victims of trafficking, although victims are not treated as criminals. The Government has conducted antitrafficking and antismuggling public awareness campaigns, and it provides limited funding to NGO's dedicated to preventing trafficking.

The Defense of Children's Rights unit in the Human Rights Ombudsman's Office and the Minors' Section of the Prosecutor's Office regularly investigate cases of trafficking. Officials in the Labor Ministry also raise the issue with the police and social welfare agencies as part of their efforts to combat child labor and child exploitation. NGO's that focus on women and children's rights often help victims of trafficking and work to educate the population about the dangers of trafficking.

Guatemala is a significant transit country for alien smuggling, both from neighboring Central American countries and Ecuador and from China, Taiwan, and South Asia; aliens often are smuggled to the United States. Traffickers use force, coercion, fraud, and deception. In one instance, Chinese male victims apparently agreed to debt bondage to pay off their transportation costs, while female victims, some of whom were under age 18, apparently were being taken to the United States to work as prostitutes. The victims were told that their families in China would suffer if they broke the debt bondage agreement.

The Ministry of Labor, UNICEF, and the U.N. Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, visited the country in 1999, and noted a marked increase in child prostitution over in the towns along the borders with Mexico and El Salvador. Along the border with El Salvador, many child prostitutes were brought into the country from El Salvador, Nicaragua, and Honduras by organized rings, which facilitate children working as prostitutes. In its 1999 annual report on the state of children, the Archbishop's Human Rights Office identified the growing problem of child prostitution as inextricably linked to that of trafficking in persons. The report notes that no child prostitute "got there alone."